TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. [redacted] 39

PAUL WILLIAMS AND LORENA WILLIAMS, HUSBAND AND WIFE, PETITIONERS,

vs.

HUGH LEE, DOING BUSINESS AS GANADO TRADING POST.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

PETITION FOR CERTIORARI FILED FEBRUARY 26, 1958.
CERTIORARI GRANTED APRIL 14, 1958

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 811

PAUL WILLIAMS AND LORENA WILLIAMS, HUSBAND AND WIFE, PETITIONERS,

vs.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

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[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF APACHE

No. 2913

HUGH LEE dba GANADO TRADING POST, Plaintiff,

v.

PAUL WILLIAMS and LORENA WILLIAMS, his wife, Defendants.

AMENDED COMPLAINT—Filed November 25, 1952

Comes now the Plaintiff in the above entitled action and for his amended cause of action against the Defendants, alleges as follows:

I.

That Plaintiff owns and operates what is known as the Ganado Trading Post at Ganado, Apache County, Arizona; that the Defendants are likewise a resident of Ganado, Arizona.

[fol. 2]

II.

That between the 5th day of January, 1949, and the 3rd day of August, 1950, at the special instance and request of the Defendants, Plaintiff sold and delivered to them certain goods, wares and merchandise of the value of Three Hundred Sixty One and 22/100 ($361.22) Dollars.

III.

That demand has been made upon the Defendants for payment of the same, but that they have failed, neglected and refused to pay the same or any part thereof; that there is now due and owing this plaintiff from the Defendants, the sum of Three Hundred Sixty One and 22/100 ($361.22) Dollars, on account of the goods, wares and merchandise sold and delivered, as aforesaid.

Wherefore, Plaintiff prays judgment against the Defendants for the principal sum of Three Hundred Sixty One and 22/100 ($361.22) Dollars, and for his costs herein expended.

/s/ M. V. Gibbons, Attorney-at-law St. Johns, Arizona

[fol. 3]

IN SUPERIOR COURT OF APACHE COUNTY

BOND ON ATTACHMENT—Filed October 20, 1952

KNOW ALL MEN BY THESE PRESENTS: That we,

Hugh Lee, dba Ganado Trading Post

as Principal, and the UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland and authorized to transaction surety business in the State of Arizona, as Surety, acknowledge ourselves bound to pay to

the sum of Three Hundred Sixty-one and 22/100 Dollars ($361.22),

conditioned that the above bound Hugh Lee Plaintiff in attachment against the said Paul Williams and Lorena Williams Defendants, will prosecute said suit to effect and that he will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment.

IN TESTIMONY WHEREOF, the said Principal has subscribed his name and affixed his seal, and the said Surety has caused its name and seal to be hereunto affixed by its duly authorized Attorney-in-Fact, at Holbrook, Arizona, on the 15th day of October, A.D. 1952.

/s/ Hugh Lee (SEAL)

[fol. 4]

UNITED STATES FIDELITY AND GUARANTY COMPANY

By /s/ Robert A. Henning
Attorney-in-Fact (Seal)

Approved this 20 day of October, 1952.

/s/ J. Smith Gibbons
Judge

[fol. 5]

IN SUPERIOR COURT OF APACHE COUNTY

WRIT OF ATTACHMENT AND RETURN—Filed October 23, 1952

DEMAND, *$361.22*

THE STATE OF ARIZONA

TO THE SHERIFF OR ANY CONSTABLE OF *Apache* COUNTY, GREETINGS:

WE COMMAND YOU That you attach forthwith, so much of the property of *Paul Williams and Lorena Williams, his wife, defendants, to-wit*:

To-wit: one band of sheep near or in the vicinity of Steamboat Canyon.

if to be found in your County, on Security, as shall be of value sufficient to make the sum of *Three Hundred Sixty-One and 22/100* DOLLARS, and the probable costs of suit, to satisfy the demand of

Hugh Lee, dba Ganado Trading Post, plaintiff

and that you keep and secure it your hands the property so attached, unless replevined, that the same may be liable to further proceedings thereon, to be had before the Court and that you make return of the Writ showing how you executed the same.

GIVEN under my hand and seal of said Court, this *20th* day of *October*, 1952.

/s/ Merle W. Heap
Clerk of the Superior Court.

By: .....
Deputy Clerk

(Seal)

[fol. 6] RECEIVED

John T. Crosby 10-20-52
10:00 A.M.
Sheriff Apache County

IN THE SUPERIOR COURT OF *Apache* COUNTY
STATE OF ARIZONA

To *Merle W. Heap, Clerk of Superior Court*

By virtue of an Attachment issued out of the Superior Court of *Apache* County, State of Arizona, and to me directed against the within named Defendants, I *John T. Crosby Did attach A band of sheep as follows to-wit*

Five ewes two bucks four goats branded "R"
Nine ewes branded "W"
Twelve ewes branded "V"

WITNESS my hand this *21st* day of *October*, 1952.

/s/ John T. Crosby
Sheriff Apache Ct.

[fol. 7]

IN SUPERIOR COURT OF APACHE COUNTY

MOTION TO DISMISS ACTION BECAUSE OF LACK OF JURISDICTION
—Filed November 7, 1952

I

Come now the Defendants in the above entitled and numbered action and move this Honorable Court for an order dismissing said action for the reason and upon the grounds that the Defendants are members of the Navajo Tribe of Indians and reside on the Navajo Reservation, where they resided at the time of the commencement of this action; that at the time of the commencement of this action the Plaintiff, as shown by the face of his complaint, was the owner of a trading post known as Ganado Trading post at Ganado, Apache County Arizona.

II

That at the time of the commencement of this action the Plaintiff caused to be issued out of the above entitled court, in the above entitled action, a writ of attachment which he caused to be levied on property of the Defendants and property of two of their children; that the property which

was levied upon was located at a point called Steamboat Canyon, or in that vicinity, and was wholly on the Navajo Indian Reservation, and that the jurisdiction of any action belonged on said reservation in the Indian courts and not in the Superior Court of Apache County, Arizona, or any other court.

[fol. 8] Wherefore, Defendants pray that said action be dismissed as against them; that the property taken by levy under said writ of attachment be restored to them and for their costs and expenses of this action.

/s/ W. E. Ferguson, Attorney for Defendants.

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF ARIZONA,
County of Navajo.—ss.

Paul Williams, being first duly sworn, on his oath deposes and says: That he (sic) one of the defendants named in the foregoing, above-entitled and -numbered action; that he has read the motion to dismiss on the ground of lack of jurisdiction and the motion to dismiss on the ground of statute of limitation having run before the commencement of this action; and that the statements made in each of said motions are true and correct of his own knowledge;

That both affiant and Lorena Williams, his wife, are Navajo Indians and have lived on the Navajo Reservation at all times herein mentioned; that they did live on the Navajo Reservation when they were served with summons and attachment herein, and that they were served with both summons and attachment herein, and that they were served with both summons and attachment on the Navajo Reservation; that they have not committed any act or authorized [fol. 9] anything to be done or committed submitting themselves to the jurisdiction of the above-entitled Superior Court in the above-entitled and -numbered action.

Dated November 6, 1952.

/s/ Paul Williams.

Subscribed and sworn to before me this 6th day of November, 1952.

/s/ W. E. Ferguson, Notary Public.

Seal

My Commission expires July 6, 1953

(Notary Seal)

STATEMENT OF LEGAL POINTS

I

The defendants state as their legal points in support of their motion to dismiss this action for lack of jurisdiction in the court, that Navajo Indians may not be submitted to the general jurisdiction of a state court by action filed in the state court.

II

That the State of Arizona, by its enabling act, agreed that the jurisdiction of Navajo Indians pertaining to their affairs on the reservation may not be made the subject of Civil action in a state court.

[fol. 10]

III

That the Statute of Limitations of the State of Arizona, to-wit, Sec. 29-203, Subdivision 2, is a statute of repose, and that when a defendant appears for the purpose of raising the limitation of actions the same should recognized by the court and the action dismissed.

/s/ W. E. Ferguson, Holbrook, Arizona, Attorney for Defendants.

IN SUPERIOR COURT OF APACHE COUNTY

ANSWER—Filed November 7, 1952

Special Affirmative Defense No. I

The defendants here allege, without waiving their motions to dismiss this action, that they have at all times in

the plaintiff's complaint mentioned, been, and now are, members of the Navajo Tribe of Indians, living on the Navajo Reservation; that they were served with summons, complaint and attachment on the Navajo Reservation, and that property belonging to the defendants and others on the Navajo Reservation was taken from said reservation.

Special Affirmative Defense No. II

The defendants herein allege that the cause of action sued upon herein, as shown by the face of the complaint and as a matter of fact, was for merchandise purchased on and before June 10, 1949; that the same was not and is not represented by any contract in writing or otherwise [fol. 11] and was on open account; that no instrument in writing is set forth by the plaintiff to extend the time for bringing this action or to toll the running of the statute of limitations.

That more than three years elapsed after the last item of account sued on herein, to-wit, June 10, 1949, and the time of bringing this action on October 8, 1952; that the statute of limitations of the State of Arizona, as set forth in Sec. 29-203, Subdivision 2, provides that actions on open account shall be brought within three years following the last item of the account sued upon.

Wherefore, defendants pray that said action be dismissed and for their costs of court herein expended.

/s/ W. E. Ferguson, Holbrook, Arizona, Attorney for Defendants.

IN SUPERIOR COURT OF APACHE COUNTY

COUNTER-CLAIM—Filed November 7, 1952

Come now the defendants in the foregoing, above-entitled and numbered action, and for counter-claim against the plaintiffs allege:

I

That the defendants were, on the 20th day of October, 1952, the owners of certain sheep, and their daughters had

other certain sheep which they were herding on the Navajo [fol. 12] Reservation in Apache County, Arizona, at a point near Steamboat Canyon, when the plaintiff caused the sheriff of Apache County in the above-entitled action to wrongfully sue out a writ of attachment, and under said writ of attachment to levy upon and take from the possession of these defendants thirty-two (32) head of sheep which the plaintiff now holds against these defendants; that the sheriff took said sheep from the possession of the defendants, as aforesaid, wrongfully and without any authority of law and in an action wherein the above-entitled court had no jurisdiction, and took them to the place of the plaintiff where they have ever since been retained, and, as defendants are informed and believe, where said sheep now are; that at the time of taking said sheep, the defendants informed the sheriff and his deputy, Lauderdale, that a portion of said sheep and the greater portion thereof belonged to his daughters and in spite of such notice said sheriff and his deputy took the said sheep, as aforesaid; that by reason thereof defendants have been damaged as follows, to-wit: For the value of the sheep at that time, Nine Hundred Sixty and No/100 ($960.00) Dollars; for the cost of Transportation, Thirty-six and 80/100 ($36.00) (sic) Dollars; for time and trouble and effort and expense on the defendants' part in connection with the wrongful taking of said sheep, Five Hundred and No/100 ($500.00) Dollars, total, One Thousand Four Hundred Ninety-six and 80/100 ($1,496.80) Dollars, no part of which damage has been paid.

[fol. 13] Wherefore, defendants and counter-claimants pray judgment against the plaintiff and counter-defendant for the sum of One Thousand Four Hundred Ninety-six and 80/100 ($1,496.80) Dollars, and for his costs and expenses of this action.

/s/ W. E. Ferguson, Holbrook, Arizona, Attorney for Defendants and Counter-claimants.

Duly sworn to by Paul Williams, jurat omitted in printing.

[fol. 14] (The above Motion to Dismiss, Answer, and Counter-Claim were filed as one document on November 7, 1952.)

[fol. 15]

IN SUPERIOR COURT OF APACHE COUNTY

ANSWER TO COUNTER-CLAIM—Filed November 22, 1952

Comes now the Plaintiff, Hugh Lee, and in answer to Defendants' Counter-Claim filed herein, admits, denies, and alleges as follows: Answering paragraph One Defendants' Counter-Claim, Plaintiff admits that a writ of attachment was sued out in this Court and action and that certain sheep belonging to the Defendants' were taken into possession by virtue of said writ; denies that said sheep was taken from Defendants' wrongfully and without authority of law, and in this connection alleges that the open account herein sued upon was contracted in the County of Apache and within the jurisdiction of this Court. Denies that any of the sheep levied under said writ belong to the daughters of the Defendants' herein but that all of said sheep belonged to Defendants'; denies that the Defendants' have been damaged in the sum of $1,496.80 or in any other sum as a result of the seizure of said sheep under the writ as aforesaid.

Wherefore, Plaintiff and Counter-Defendants prayed that the Defendants' herein take nothing by their said Counter-Claim, and that this Plaintiff have the relief sought for in his Complaint.

/s/ M. V. Gibbons, St. Johns, Arizona, Attorney for Plaintiff and Counter-Defendant.

[fol. 16] *Duly sworn to by M. V. Gibbons, jurat omitted in printing.*

[fol. 17]

IN SUPERIOR COURT OF APACHE COUNTY

PETITION FOR ORDER OF SALE OF SHEEP AND GOATS NOW HELD UNDER ATTACHMENT—Filed February 2, 1953

Comes now the plaintiff, Hugh Lee, and respectfully petitions this Court for an order of sale of sheep and goats now held under a Writ of Attachment duly issued out of this Court, and as grounds therefor alleges:

That on the 20th day of October, 1952, a Writ of Arrachment (sic) was duly issued out of this Court in the above

entitled matter; that on the 21st day of October, 1952, the Sheriff of Apache County, Arizona, made his Return on said Writ, and took into his possession under the authority of said Writ, the following described sheep and goats: Five (5) ewes and Two (2) bucks and Four (4) branded "R", also Nine (9) ewes branded "W", also Twelve (12) ewes branded "V".

That since the said 21st day of October, 1952, serious questions of law have been raised and counsel have requested additional time in which to meet the same. That John T. Crosby, Sheriff of Apache County, Arizona, placed said animals in the possession of Plaintiff on the date above mentioned, with instructions to feed and care for the same until the further order of this Court.

[fol. 18] That great expense has been incurred by plaintiff, for and on behalf of said Sheriff, in the proper feeding and care for said animals; and that unless said animals are sold and the money impounded in this Court pending the settlement of this matter, the expense incident to the keeping and caring for said animals will exceed their value.

Wherefore, plaintiff prays that the Court will authorize the service of a copy of the petition filed herein upon the defendants, and that an early date be set (sic) hearing of this said petition.

/s/ M.V. Gibbons, Attorney for Plaintiff.

[fol. 19] *Duly sworn to by Hugh Lee, jurat omitted in printing.*

[fol. 20]

IN SUPERIOR COURT OF APACHE COUNTY

ORDER TO SHOW CAUSE—February 2, 1953

A verified Petition having been filed herein praying for an Order of this Court, directing the sale of certain sheep and goats now held in this matter under and by virtue of a Writ of Attachment, and the money impounded in this court pending the outcome of the matters involved in this action, and good cause appearing therefor;

It Is Ordered that the Defendants, Paul Williams and Lorena Williams, his wife, be, and they are hereby ordered and directed to appear before this Court, at the Court Room, in the above entitled Court, at St. Johns Apache County, Arizona, on Wednesday, the 11th day of February, 1953, at the hour of 10 o'clock in the forenoon of said day, and show cause, if any they have, why the Court should not enter its order directing the sale of all of these sheep and goats now held under a Writ of Attachment issued in this matter, as more fully shown in the Petition for Sale filed herein.

It Is Further Ordered, That a copy of this Order and Petition be served upon the Defendants, or their attorney, W. E. Ferguson, at least five (5) days before the hearing.

Done in open Court this 2nd day of February, 1953.

/s/ J. Smith Gibbons, Judge of the Superior Court.

[fol. 21]

IN SUPERIOR COURT OF APACHE COUNTY

RESPONSE AND OBJECTIONS TO SALE—Filed February 11, 1953

Comes now W. E. Ferguson, attorney for defendants in the foregoing above-entitled and numbered action and by way of response to Order to Show Cause, objects on behalf of the defendants to the proposed sale, and moves to quash and discharge the attachment and levy, and for grounds of objections and motion alleges:

I

That the Court in which the action is pending does not have jurisdiction of either the persons of the defendants or the property proposed to be sold.

II

That the sheriff took the said property on an invalid writ of attachment issued by the Court without jurisdiction to issue the same.

III

That the property was taken from the defendants on the Navajo Indian Reservation.

IV

That the petition shows on its face that the possession of the property has been delivered by the sheriff to the plaintiff in this action.

[fol. 22] This motion will be based on the files, papers and records herein in the office of the Clerk of this Court.

/s/ W. E. Ferguson, Holbrook, Arizona, Attorney for Defendants.

[fol. 23]

IN SUPERIOR COURT OF APACHE COUNTY

Transcript of Testimony of Hearing on Petition for Order of Sale of Sheep and Goats

APPEARANCES

The above-entitled matter came on regularly for hearing on the 11th day of February, 1953, before the Honorable J. Smith Gibbons, Judge of the above-captioned Court; the Plaintiff was present and represented by his Attorneys M. V. Gibbons, of St. Johns, Arizona, and McQuatters and Stevenson, by Wm. Stevenson, of Flagstaff, Arizona, and the Defendants were represented by their attorney W. E. Ferguson of Holbrook, Arizona.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Heretofore and on the 2nd day of February, 1953, the Plaintiff filed herein a Petition for Order of Sale of Sheep and Goats Now Held Under Attachment. Based on said Petition was an Order to Show Cause, directing the Defendants to show cause why the petition should not be granted, and the Defendants have, by and through Mr. W. E. Ferguson, filed a responsive return. You gentlemen may go ahead and make any showing you desire.

Mr. Stevenson: If the Court please, we have presented to the Court for hearing at this time a petition requesting an order of sales with respect to certain personal property belonging to the Defendants, Paul Williams and Wife, and the Defendants, by and through their counsel, W. E. Fer-
[fol. 24] guson, have filed a response thereto. The response to the petition does not go to and attack the validity of the averments appearing in the petition with respect to the nature of the property, the excessive cost that is being incurred, and if this situation continues there will be nothing to apply on the bill, if at the hearing of the case it should be determined in favor of the Plaintiff. However, in the response to the petition one of the objections raised relates to the fact that the petition states that the property is in the possession of the Plaintiff. It is quite likely that by reason of the wording used in the allegations the Court might find an abandonment or vacation of the attachment. We, therefore, at this time respectfully request the Court to allow us to place the Plaintiff on the stand and take his testimony with respect to the facts surrounding his custody and care of the sheep, and will, upon presenting that testimony, move the Court for permission to amend the petition to allege the true facts relating to that custody.

Mr. Ferguson: In response to argument of counsel, we of course don't deny, and I don't think we are supposed to under our new rules allege things that don't exist or weren't the truth of the situation, and we didn't deny that it is expensive. It is undoubtedly expensive to keep these animals, but we do think this: That if the amendment is permitted it should not be made retro-active and relate back to the time of the taking of the sheep, or the delivery of the
[fol. 25] possession to the Plaintiff, but as I said a while ago, there is nothing to stop them from re-issuing or re-levying, if they ever had the right. We don't grant they ever had the right, but if they ever did have they could re-issue, but the purpose of it is to hold the proposition in its present existence; that is, they have in fact abandoned their levy or lien. I don't believe there is any question whether or not a Sheriff can turn property to any party in the action in advance of the Court's decision on that.

The Court: The objection will be overruled and the Plaintiffs will be permitted to put on testimony as to whose possession the sheep should actually have been.

Thereupon, Mr. Hugh Lee was called as a Witness and being first duly sworn testified as follows:

Direct examination.

By Mr. Gibbons:

Q. Your name is Hugh Lee and you are the Plaintiff in this action No. 2913?

A. Yes, sir.

Q. Now at issue before the Court?

A. Yes.

Q. Mr. Lee, will you state to the Court the circumstances under which a band of sheep and goats were placed on your premises at Ganado?

A. Well, sir, I came to St. Johns to my Attorney and asked that garnishment be made on these sheep of Mr. [fol. 26] Paul Williams, because he had been neglectful in making any payments on his bill. After several tries I had become convinced the only way I could collect the bill was by garnishment. At the time the Sheriff came to Ganado, I was not there. In order that he could find the sheep he picked up my assistant manager of the store, Mr. Wendell Harris, who assisted the Sheriff in finding Mr. Williams, and when they found the Sheep they hired a truck to haul the sheep into Ganado, and at the time he left the sheep he unloaded them in the corral of the Ganado Trading Company, and left instructions with Mr. Harris that we were to take care of them, feed them and protect them until further notice by the Court, and that is the way it has been done. We have done everything that we could do to take care of the sheep and protect them from loss, and they are still in the same corral he put them in.

Q. You were not present at the time the Sheriff delivered these sheep at the corral?

A. No, sir, I was not home.

Q. How long before you returned and knew a band of sheep was at your place?

A. I came home late that night. Evidently the sheep were put in there around six or seven o'clock in the evening, and I returned home around midnight.

Q. Were you, or any of your employees, present at the time the sheep were actually taken in possession of the Sheriff under the Writ?

[fol. 27] A. Yes, sir, Mr. Harris was accompanying the Sheriff to show him where Mr. Williams lived.

Q. As to the number of sheep and the actual sheep that were taken, you took no part in pointing out or telling the Sheriff which sheep?

A. No, I got the information from the District Supervisor——

Mr. Ferguson: I don't really see that is a question involved here at all.

The Court: Objection sustained.

By Mr. Gibbons:

Q. What time was the sheep left on your premises?

A. I am not positive. I think around six or seven o'clock in the evening.

Q. What day?

A. I believe October 21st.

Q. And since that time you have had them there in your corral?

A. Yes, sir.

Q. Can you submit to the Court the approximate cost of taking care of those sheep per day and give the total?

A. We have set the cost of $4.00 a day, beginning October 22nd.

Q. Four Dollars a day represents the total cost of feed, care, water and so on, is that right?

A. That is right sir.

Q. And what is the total cost up to date, if you can tell, of the care of those sheep, until today?

A. I haven't figured it out. I presented the bill to the [fol. 28] Sheriff on the first of January. I think it was in the amount of $284.00.

Mr. Gibbons: I wonder if the Court will permit the witness to take time out and give the Court what he figures the cost up to date of keeping the sheep?

The Court: That really isn't controverted.

Mr. Gibbons: It is just a question of showing the necessity of a sale.

The Court: That isn't controverted. The only question that has been raised is the question of possession. I think counsel even admits it is expensive.

Mr. Gibbons: To back up our petition, we had alleged that the costs were excessive and if they were longer kept—

The Court: That isn't controverted, Mr. Gibbons. They haven't controverted that. In fact counsel has admitted it. The only thing the Court is particularly interested in is the question of possession.

By Mr. Gibbons:

Q. You were not there at the time the Sheriff personally left the sheep at your place, with instructions to take care of them?

A. No, sir.

Q. Have you had any conversation with the Sheriff relative to this since that time?

A. The only contact I have had with him is asking him when he was going to pay for the feed. He left full instructions with Mr. Harris to take care of the Sheep at Ganado Trading Company.

[fol. 29] Mr. Gibbons: I think that is all.

Cross examination.

By Mr. Ferguson:

Q. Mr. Lee, did the Sheriff ever give you any paper or instrument in writing at all concerning your possession, or having possession of the sheep?

A. No, sir.

Q. To your knowledge the sheep were there at your place and in your corral the very day they were attached by the Sheriff?

A. Yes, sir.

Q. As a matter of fact the Sheriff never did take them into his possession, other than to bring them to your corral and left them right there, is that right?

A. Well, sir, he picked them up and put them in a truck. He contracted for their hauling them to my corral, and left them there with instructions to feed them until further order, and so far we have had no further order, and we have been feeding them.

Q. You are the Plaintiff in this action?

A. Yes, sir.

Q. Has the Sheriff been back there since the day he actually left them in your corral?

A. No, sir.

Mr. Ferguson: I believe that is all.

[fol. 30] Redirect examination.

By Mr. Gibbons:

Q. As a matter of fact, your investigation showed, when you did return, the Sheriff had in his possession the sheep from the point where they were delivered in the truck to your place?

A. Yes, sir.

Mr. Gibbons: That is all.

Mr. Ferguson: That is all.

. . . . . .

Mr. Ferguson: I want to call the Court's attention to the return on the Writ in this case. Of course, you will take judicial notice of the records.

MOTION TO AMEND PETITION FOR ORDER OF SALE AND RULING THEREON

Mr. Stevenson: If Your Honor please, at this point we will move the Court for permission to amend the Petition for Order of Sale with respect to paragraph 3, page 1, as follows: It now reads: "That John T. Crosby, Sheriff of Apache County, Arizona, placed said animals in the possession of Plaintiff on the date above mentioned, with instructions to feed and care for the same until the further order of this Court". We move that it be amended to read as follows: "That John T. Crosby, Sheriff of Apache County, Arizona, has since the said 21st day of October,

1952, held the said property pursuant to said Writ of Attachment."

Mr. Ferguson: That is alleging a conclusion. I object to the amendment, and it also denies the testimony given [fol. 31] by the Plaintiff himself. He says nothing about how he is holding the property, except he just fed it and cared for it. I object to the amendment.

Mr. Gibbons: Doesn't the Writ show the Sheriff took in his possession the personal property?

The Court: It says, "He did attach a band of sheep as follows, to-wit: Five ewes two bucks four goats branded 'R'; Nine ewes branded 'W', Twelve ewes branded 'V'.

Mr. Ferguson: If I remember the levy under attachment law there are two ways it can be accomplished, and the Sheriff's return should show which way it was accomplished. The law provides that the levy be made by recording the copy of the notice, and the other one is that he took them into his possession, and the law is flat and positive that he must retain them in his possession. Now, if he lets them out of his possession he should show something in the record as to how it happened.

Mr. Stevenson: We move the Court that the last sentence of paragraph 3, page 1 of the petition be amended to read as follows: "That John T. Crosby, Sheriff of Apache County, Arizona, has since the said 21st day of October, 1952, held the said property pursuant to said Writ of Attachment.

Mr. Ferguson: It is against the facts.

The Court: There is some question there, alright. I think the objection will be overruled and the amendment [fol. 32] be permitted. After all this will be a question to come out later on when we get all the facts. I think the Clerk could make the amendment now by interlineation.

(The matter of a pre-trial conference was discussed between Court and counsel, and also the matter of filing briefs prior to said pre-trial hearing.)

Order Granting Petition for Order of Sale

The Court: Let the record show that the petition for Order of Sale is granted and the Sheriff authorized to sell said property in the manner provided by law, and that the

proceeds from said sale are to be impounded in the Clerk of Court's Office, subject to the final determination of this matter. I think it might be well to have that order in writing, and we will have it in the file.

The pre-trial hearing is set for March 4th, 1953, at 10: o'clock a.m., in Holbrook, Arizona, by agreement of counsel.

Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 33]

IN SUPERIOR COURT OF APACHE COUNTY

SUPPLEMENTAL PETITION FOR DISPOSITION OF ATTACHED PROPERTY—Filed February 21, 1953

Comes Now Plaintiff, Hugh Lee, by his attorneys, McQuatters & Stevenson, and respectfully represents and shows unto the Court:

That he is plaintiff in the above entitled cause; that by virtue of a Writ of Attachment issued in this cause on the 20th day of October, 1952, John T. Crosby, Sheriff of Apache County, did, on the 21st day of October, levy on, seize and attach the following described property:

Five ewes, two bucks and four goats branded "R";
Nine ewes, branded "W";
Twelve ewes, branded "V";

That on February 11, 1953, upon proper application this Court entered an order authorizing the sale of said animals in the manner provided by law.

That the ewes presently in the custody of the Sheriff pursuant to said Writ of Attachment have lambed; that said increase, namely 18 lambs, is likewise held by said Sheriff by virtue of said Writ of Attachment; that the cost of feeding and maintaining the same is expensive and that the value of said property is held pending the determination of this action will, in all likelihood, be greatly diminished by reason of such expense.

[fol. 34] That defendants have paid to plaintiff the sum of $300.00 upon the account alleged in plaintiff's Complaint.

That plaintiff is informed and believes, and therefore alleges that the proceeds received from the sale of the prop-

erty originally attached will suffice to satisfy the judgment, if for plaintiff, together with Court costs and costs and expenses incurred by the Sheriff in connection with said attachment.

That by reason of the facts herein set forth it will be unnecessary to sell and dispose of the increase of said attached property, to wit, 18 lambs; that further retention of said animals is unnecessary and will result in the accrual of needless expense.

Wherefore, plaintiff prays that this Court enter its order releasing said 18 lambs from custody and authorizing the Sheriff of Apache County, Arizona, to return the same to defendants.

Dated This ..... day of February, 1953.

McQuatters & Stevenson, by /s/ Wm. W. Stevenson, 203 Talkington Building, Flagstaff, Arizona, Attorneys for Plaintiff.

[fol. 35]

IN SUPERIOR COURT OF APACHE COUNTY

STIPULATION OF COUNSEL RELATING TO SALE OF ATTACHED PROPERTY AND TO HEARING ON PETITION FOR DISPOSITION OF ATTACHED PROPERTY—Filed March 3, 1953

Whereas, the Superior Court of the State of Arizona, in and for the County of Apache, did on the 11th day of February, 1953, enter an order authorizing the sale of the following described property.

Five ewes, two bucks, four goats branded "R";
Nine ewes branded "W";
Twelve ewes branded "V";

and

Whereas the plaintiff has heretofore, by Supplemental Petition for Disposition of Attached Property, presented to the Court facts showing an increase in amount of attached property, namely, eighteen lambs, and requested, upon the basis of the facts set forth in such Petition that

said property be released from attachment and returned to the defendants; and

Whereas, counsel for plaintiff and defendants are agreed that all matters relating to the sale of said attached property and relating to the release of the increase thereto should be disposed of with the least possible delay,

Now, therefore,

[fol. 36] It Is Stipulated by and between counsel for plaintiff and defendants:

1. That notice of sale of said personal property held pursuant to attachment shall be given as provided by law in such cases made and provided, except that notice of sale shall not be required to be posted for a period of more than five days before the day of sale.

2. That plaintiff's Supplemental Petition for Disposition of Attached Property is submitted to the Court for its consideration without notice of hearing required to be given defendant's attorney, and that the matter may be considered by the Court upon the present state of the record.

3. That defendants' objections to the original Petition for Order of Sale of Sheep and Goats Now Held Under Attachment shall likewise apply to the Supplemental Petition, that is to say, defendants do not, by the terms and provisions of this stipulation, recognize the Court's jurisdiction and authority in the premises with respect to disposition of whatever nature of the property or any increase thereto.

4. That the stipulations and agreements of counsel herein specified do not constitute a waiver of the fundamental rights in the premises, nor do such stipulations constitute defendants' recognition of the jurisdiction of this Court or the Sheriff of Apache County to issue a writ of attachment, to levy upon and seize property or to enter orders with [fol. 37] respect to the disposition of the same within that portion of the Navajo Reservation situate in Apache County, Arizona.

Dated this 20th day of February, 1953.

McQuatters & Stevenson, by Wm. W. Stevenson, 203 Talkington Building, Flagstaff, Arizona, Attorneys for Plaintiff.

W. E. Stevenson, (sic) Holbrook, Arizona, Attorney for Defendants.

[fol. 38]

IN SUPERIOR COURT OF APACHE COUNTY

ORDER OF DISPOSITION OF ATTACHED PROPERTY—March 3, 1953

Plaintiff having heretofore filed his Supplemental Petition seeking disposition of the attached property, and it appearing therefrom that there is an increase thereto, to-wit, eighteen (18) lambs, and further that it will be unnecessary to sell said increase for the purpose of satisfying the amount of plaintiff's claim, and

The parties, by their counsel, having stipulated with respect to the hearing of said Supplemental Petition, and good cause appearing therefor,

It Is Ordered that said increase, namely, eighteen (18) lambs, is hereby released from attachment, and the Sheriff of Apache County, Arizona, be and he is hereby authorized to return said property to the defendants.

Dated this *3rd* day of March, 1953

/s/ J. Smith Gibbons, Judge.

Approved as to form:

/s/ W. E. Ferguson, Attorneys for Defendants.

[fol. 39]

IN SUPERIOR COURT OF APACHE COUNTY

ORDER RELATING TO SALE OF ATTACHED PROPERTY —March 3, 1953

Pursuant to stipulation of counsel,

It Is Ordered that that property which is the subject of this Court's order of February 11, 1953, relating to the sale and disposition thereof, shall be sold by the Sheriff of

Apache County in the manner provided by law, upon five (5) successive days notice of sale.

Dated This *3rd* day of March, 1953

/s/ J. Smith Gibbons, Judge.

Approved as to form:

W. E. Ferguson, Attorney for Defendants.

[fol. 40]

IN SUPERIOR COURT OF APACHE COUNTY

WRIT DIRECTING SALE OF ATTACHED PROPERTY—March 7, 1953

THE PEOPLE OF THE STATE OF ARIZONA
TO THE SHERIFF OF APACHE COUNTY,
GREETING:

WHEREAS, a motion was made and entered in the above titled cause praying, among other things, that certain property heretofore levied upon under attachment herein be sold by the Sheriff; and,

WHEREAS, the said motion came on to be heard the 11th day of February, 1953, and an order was made and entered directing the Sheriff of Apache County, Arizona, to sell the property hereinafter described in the same manner as sales of personal property under execution, the proceeds thereof to be paid into the Clerk of Court of Apache County, Arizona; and,

WHEREAS, by order of this Court entered on the 3rd day of March, 1953, pursuant to stipulation of counsel it was provided that Notice of Sale be shortened to five days;

NOW, THEREFORE, you are hereby commanded to sell the said property after giving notice as herein specified, the proceeds of such sale to be delivered over to the Clerk of this Court pending final disposition and settlement of the case.

[fol. 41] Said property is described as follows:

Five ewes, two bucks, four goats branded "R";
Nine ewes branded "W";
Twelve ewes branded "V".

WITNESS my hand and the seal of the Superior Court of Apache County, Arizona, this *7th* day of March, 1953.

(SEAL)

/s/ MERLE W. HEAP
Clerk of the Superior Court

By .....
Deputy

[fol. 42]

IN SUPERIOR COURT OF APACHE COUNTY

NOTICE OF SALE—March 9, 1953

Whereas, by virtue of a writ of attachment issued out of and under the seal of the Superior Court in and for the County of Apache, in the State of Arizona, on the 20th day of October, 1952, in the above entitled action, I, John T. Crosby, Sheriff of Apache County, Arizona, levied upon and attached all the right, title and interest of the defendants in and to the following described personal property:

Five ewes, two bucks, four goats branded "R";
Nine ewes branded "W";
Twelve ewes branded "V";

and

Whereas, on the *3rd* day of March, 1953, the above Court entered its order directing that I, John T. Crosby, Sheriff of Apache County, Arizona, proceed to advertise and sell the above described property to satisfy the amount of the plaintiff's claim, to wit, the sum of Three Hundred Sixty-one and 22/100 ($361.22), together with probable costs of said action, and costs and expenses relating to sale;

Now, therefore,

Notice Is Hereby Given that I, the undersigned Sheriff, as aforesaid, will sell the above described personal property to the highest bidder, for cash, at public auction, at .....

[fol. 43] *The Corral, at the Ganado Trading Post, Ganado, Arizona*

on the *16th* day of March, 1953, at the hour of 10:00 A. M., to satisfy the said attachment, together with the costs and probable costs in connection therewith.

Dated this *9th* day of March, 1953.

John T. Crosby, Sheriff.

[fol. 44]

IN SUPERIOR COURT OF APACHE COUNTY

PETITION FOR MODIFICATION OF ORDERS RELATING TO SALE AND DISPOSITION OF ATTACHED PROPERTY—Filed March 26, 1953

Comes now plaintiff and respectfully represents and shows unto the Court:

1. That plaintiff presented to this Court on February 11, 1953, his petition for order of sale of sheep and goats held under attachment and the Court, being advised in the premises, entered its order directing the sale of the attached property.

2. That thereafter plaintiff brought to the Court's attention the fact that there was an increase in the band of sheep held under attachment and the fact that the defendant had paid a portion of the claim set forth in plaintiff's Complaint, pursuant to which the Writ of Attachment had theretofore issued, all of which more fully appears from the records and files in this case.

3. That upon being informed of such facts, the Court entered its order authorizing and directing the sale of the property originally attached, or so much thereof as might be necessary to satisfy plaintiff's claim, together with probable costs, and entered its order authorizing and directing the release of the increase.

4. That pursuant to such orders and by reason of stipulation entered into by counsel for plaintiff and defendant, [fol. 45] the sale of attached property was set for March 16, 1953.

5. That plaintiff has instructed the Sheriff to continue the said sale until March 26, 1953, by reason of the fact that plaintiff is informed and believes, and therefore alleges

that the said increase, i.e. lambs, cannot be separated from the ewes originally attached without causing loss of the said increase and resultant damage to defendant.

Wherefore, plaintiff prays:

1. That the orders relating to sale and disposition of attached property heretofore entered by (sic) modified to authorize and direct the sale of the property originally attached, together with the increase thereof, or so much of all of said property as shall be necessary to satisfy the balance of plaintiff's claim, together with probable costs, and further modified to provide that all remaining property be released to the defendant.

2. That the writs heretofore issued out of this Court pursuant to said orders relating to disposition and sale of attached property be quashed and a writ issued in the place and stead thereof, directing the Sheriff to dispose of said property in the manner herein requested.

Dated this 19th day of March, 1953.

McQuatters & Stevenson, by Wm. W. Stevenson, Attorneys for Plaintiff.

[fol. 46] *Duly sworn to by Wm. W. Stevenson, jurat omitted in printing.*

[fol. 47]

IN SUPERIOR COURT OF APACHE COUNTY

STIPULATION OF COUNSEL RELATING TO SALE OF ATTACHED PROPERTY AND RELATING TO THE HEARING ON PLAINTIFF'S PETITION FOR MODIFICATION OF ORDERS PERTAINING TO SALE AND DISPOSITION ON ATTACHED PROPERTY

—Filed March 26, 1953

Whereas, the plaintiff in the above subject case has prepared and proposes to file a petition seeking modification of the following specified Court orders:

Order Relating to Sale of Attached Property;
Order of Disposition of Attached Property;

and requesting the quashal of all writs heretofore issued out of the Superior Court of the State of Arizona in and

for the County of Apache pursuant to the above specified orders; and,

Whereas, plaintiff seeks such modification by reason of the fact that the sale and disposition of the attached property and the increase thereto as specified in said orders will result in loss and injury to the defendants; and,

Whereas, it appears that the method of sale and disposition of said property as proposed by plaintiff and requested in the petition above referred to is to the best interest of all parties concerned; and,

[fol. 48] Whereas, the plaintiff has continued the sale from the 16th day of March, 1953, to the 26th day of March, 1953, for the purpose of securing the modifications above referred to; and,

Whereas, the plaintiff desires that said petition be presented for hearing before the Court without the necessity of delay incident to giving notice to defendants and their counsel,

Now, Therefore, it is stipulated by and between counsel for plaintiff and defendants:

1. That plaintiff's petition for modification of orders relating to sale and disposition of attached property may be submitted to the Court forthwith for its consideration without notice of hearing thereof to defendants' attorneys and that the matter may be considered by the Court upon the present status of the record.

2. That defendants waive their right to notice of hearing said petition ~~and agree that a sale held on March 26, 1953, pursuant to such order or orders of the Court as may be entered upon presentation of plaintiff's petition for modifications, shall constitute a legal sale held pursuant to notice duly given~~.

W.W.S.
W.E.F.
3/26/53

3. That defendants' objections to the original petition for Order of Sale of Sheep and Goats Now Held under At-
[fol. 49] tachment shall likewise apply to plaintiff's Peti-

tion for Modification of Orders relating to Sale and Disposition of Attached Property; that is to say, defendants do not, by the terms and provisions of this stipulation, recognize the Court's jurisdiction and authority in the premises with respect to its disposition of the attached property or the increase thereto.

4. That the agreements and stipulations of counsel herein specified do not constitute a waiver of defendants' rights in the premises except to the extent herein provided, nor do such agreement and stipulation constitute a recognition on defendants' part of the jurisdiction of this Court or the Sheriff of Apache County to levy upon and seize property of these defendants when such property is situate within that portion of the Navajo Reservation situate in Apache County, Arizona.

Dated this 26th day of March, 1953.

McQuatters & Stevenson, by /s/ W. W. Stevenson,
Attorneys for Plaintiff.

/s/ W. E. Ferguson, Attorneys for Defendants.

[fol. 50]

IN SUPERIOR COURT OF APACHE COUNTY

ORDER OF SALE AND DISPOSITION OF ATTACHED PROPERTY
—March 26, 1953

Plaintiff having heretofore filed his petition for modification of orders relating to sale and disposition of attached property, seeking modification of the following orders of this Court:

Order of Disposition of Attached Property;
Order Relating to Sale of Attached Property:

and the quashal of writs issued pursuant to such orders; and,

It appearing to the Court that defendants, by and through their attorney, have stipulation that said petition may be heard without notice, and plaintiff appearing at this time by his attorneys and the Court being advised in the premises and good and sufficient reason appearing therefor,

It Is Ordered that the above specified orders of this Court be and the same are hereby modified in the manner hereinafter set forth and it is further ordered that the writs directing the sale and disposition of attached property heretofore issued out of this Court be quashed.

It Is Further Ordered that the attached property, described as follows:

Five ewes, two bucks, four goats branded "R";
Nine ewes, branded "W";
Twelve ewes branded "V";

[fol. 51] and the increase thereof, to wit, 18 lambs, or so much of said property together with the increase as shall be necessary to satisfy the balance of plaintiff's claim, together with costs and probable costs, shall be sold by the Sheriff of Apache County in the manner provided by law and in such manner as shall protect and preserve the increase, and that any property remaining be released to the defendants.

~~It Is Further Ordered that said sale shall be held on March 26, 1953, pursuant to stipulation of counsel.~~

(Initialed)
J.S.G.

It Is Further Ordered that the said Sheriff of Apache County, Arizona, shall make return to this Court within five (5) days from the date of such sale of what he has done pursuant to this order, and shall deposit with the Clerk of this Court the proceeds of such sale, pending final adjudication of the case.

Done on open Court this *26th* day of March, 1953.

/s/ J. Smith Gibbons, Judge of the Superior Court.

[fol. 52]

IN SUPERIOR COURT OF APACHE COUNTY

WRIT DIRECTING SALE AND DISPOSITION OF ATTACHED PROPERTY—March 26, 1953

THE PEOPLE OF THE STATE OF ARIZONA
TO THE SHERIFF OF APACHE COUNTY,
GREETING:

WHEREAS, a motion was made and entered in the above entitled cause, praying, among other things, that certain property heretofore levied upon under attachment herein be sold by the Sheriff; and,

WHEREAS, the said motion came on to be heard the 11th day of February, 1953, and an order was made and entered directing the Sheriff of Apache County, Arizona, to sell the property hereinafter described in the same manner as sales of personal property under execution, the proceeds thereof to be paid in to the Clerk of Court of Apache County, Arizona; and,

WHEREAS, by order of this Court entered on the 3rd day of March, 1953, the said order of February 11, 1953, was modified in certain particulars;

NOW, THEREFORE, pursuant to said orders and the modifications thereof, you are hereby commanded to sell the property hereinafter described, or so much thereof as shall be necessary and in such manner as shall preserve and protect the increase in the band of sheep held under attachment to satisfy plaintiff's claim, together with costs [fol. 53] and probable costs, proceeds of such sale to be delivered over to the Clerk of this Court, pending final disposition of the case. Said property is described as follows:

Five ewes, two bucks, four goats branded "R";
Nine ewes branded "W";
Twelve ewes branded "V";

together with the increase thereto, to wit, 18 lambs.

~~It Is Further Ordered that said sale shall be held on March 26, 1953, pursuant to stipulation of counsel for plaintiff and defendants.~~

(Initialed) E.J.

WITNESS my hand and the seal of the Superior Court of Apache County, Arizona, this *26* day of March, 1953.

MERLE W. HEAP
Clerk of the Superior Court

(SEAL)

By /s/ Elmo Jarvis, Deputy

[fol. 54]

IN SUPERIOR COURT OF APACHE COUNTY

RETURN OF SALE OF PERSONAL PROPERTY—March 31, 1953

STATE OF ARIZONA,
County of Apache.—ss.

I, John T. Crosby, Sheriff of Apache County, Arizona, hereby certify that pursuant to writs relating to sale and disposition of attached property, issued out of the Superior Court of Apache County, Arizona, in the above entitled cause on the 3rd day of March, 1953, as modified on March 26, 1953, I proceeded to execute the same in the following manner:

That I gave public notice of the sale of said property by posting a printed notice of the time and place of sale in three public places in Apache County for more than five (5) days prior to the date of sale, namely the 16th day of March, 1953, and that on the said 16th day of March, 1953, I continued the said sale to the 26th day of March, 1953, by due and legal notice of continuance attached to each of the original notices of sale as posted and that on the said 26th day of March, 1953, at the hour of 2:00 o'clock P. M. at Ganado Trading Post, Ganado, Apache County, Arizona, the same being the date and place of sale prescribed by said notice, I sold at public auction for cash in hand on said date the personal property described for the sums and to the persons hereinafter named:

[fol. 55]

4 goats	$38.00	Mrs. Dick Teller
2 rams	$52.25	Joe Begay
1 dry ewe	$10.00	H. A. Martin
1 dry ewe	$11.50	Irene Williams
1 dry ewe	$16.50	Burt Wanukea
1 dry ewe	$16.00	Burt Wanukea
1 dry ewe	$21.25	Guy Williams
1 ewe with lamb	$ 7.00	Denet Chelly
1 ewe with lamb	$14.50	Tom McCabe
1 ewe with lamb	$21.00	Glennie May Kee
1 ewe with lamb	$20.00	Irene Williams
1 ewe with lamb	$21.00	Lena Begay
1 ewe with lamb	$23.00	Marie Tsosie

That said property was sold singly or in lots in a manner calculated to bring the highest and best prices therefor and that the order of sale of said animals, namely goats, rams, dry ewes and finally ewes with lambs was the order of sale requested by the defendants; that in each sale as above specified each animal or animals sold was the number offered for sale at that time; that the person above named as buyer was the successful bidder in each particular instance; that his or her bid was the highest and best bid and that all sales were announced both in English and Navajo; that upon the conclusion of the foregoing sales

Eleven J.T.C.

there remained ~~ten~~ ewes and *12* lambs, all of which property was thereupon immediately released to the defendants.

That there was due to satisfy plaintiff's claim, costs and probable costs, according to plaintiff's statement, the sum of $273.92.

[fol. 56] That there was received from the foregoing sales the sum of $272.00; that the defendants made up the sum of $2.00 and that there is returned herewith into Court, pursuant to instructions contained in the above mentioned writ, for the purpose of satisfying plaintiff's claim, with costs and probable costs, the sum of $274.00.

That there are attached hereto and by reference made a part of this return the following instruments:

Exhibit "A"—Writ Directing Sale and Disposition of Attached Property.
Exhibit "B"—Statement of Costs and Expenses relating to this transaction.

Dated this *31st* day of March, 1953.

/s/ John T. Crosby, Sheriff of Apache County.

EXHIBIT "B"

APACHE COUNTY SHERIFF
ST. JOHNS, ARIZONA
March 31, 1953

STATEMENT OF COSTS AND EXPENSES RELATING TO ATTACHMENT AND ORDER OF SALE IN THE MATTER OF: Hugh Lee vs. Paul and Lorena Williams, case #2913.

Item #	
1—Balance Due on plaintiff's account	$81.22
2—Expense moving attached sheep from steamboat to Ganado.	35.00
[fol. 57]	
3—Expense returning Sheep to Defendant, left over from sale.	20.00
4—Judgment fee.	5.00
5—Filing fee.	10.00
6—Service fee 2 Summons.	3.00
7—Service Writ of Attachment.	2.00
8—Mileage in connection with service of Attachment & 2 Summons.	38.10
9—20c per $100.00 on $300.00 sale and $2.50 for levying and returning the the Writ of Attachment.	3.10
10—Mileage in connection with Original Sale March 16, 1953, and continuance thereof to March 26, 1953.	28.20
11—Posting notice of Sale, including mileage	16.10
12—Cost of interpreter for Sale	5.00
Total EXPENSES AND COSTS	$246.72

Dated at St. Johns, Arizona this 31st day of March, 1953.

/s/ JOHN T. CROSBY
John T. Crosby, Sheriff
Apache County
St. Johns, Arizona

[fol. 58]

IN SUPERIOR COURT OF APACHE COUNTY

MOTION TO DISMISS COUNTERCLAIM—Filed April 16, 1953

Comes now the plaintiff, Hugh Lee, by and through his attorneys, and moves the Court for an order dismissing defendants' Counterclaim, upon the ground and for the reason that the said Counterclaim fails to state a claim against this plaintiff upon which relief can be granted.

Dated this 15th day of April, 1953.

M. V. Gibbons and McQuatters & Stevenson, By /s/ Wm. W. Stevenson, Attorneys for Plaintiff.

[fol. 59]

IN SUPERIOR COURT OF APACHE COUNTY

MOTION FOR MORE DEFINITE STATEMENT —Filed April 16, 1953

Comes now the plaintiff Hugh Lee, by and through his attorneys, and without waiving his Motion to Dismiss Counterclaim heretofore made and filed in the above titled cause, but always insisting upon the same, moves the Court for an order requiring defendants to make a more definite and specific statement of the allegations contained in defendants' said Counterclaim, specifically those allegations contained in Paragraph I thereof, as follows:

"...when the Plaintiff caused the sheriff of Apache County in the above-entitled action to wrongfully sue out a writ of attachment, and under said writ of attachment to levy upon and take from the possession of these defendants thirty-two (32) head of sheep which the plaintiff now holds against these defendants;..."

The foregoing motion requesting an order requiring defendants to furnish a more definite statement of the above quoted portion of defendants' Counterclaim is made and based upon the following grounds:

1. Plaintiff is unable to determine the meaning of defendants' allegations to the effect that plaintiff caused the Sheriff to wrongfully sue out a Writ of Attachment.

2. Plaintiff is unable to determine the meaning of defendants' allegation which states that plaintiff now holds said sheep against these defendants.

[fol. 60] 3. The quoted portion of defendants' Counterclaim contains the following conclusion of law: " . . . Plaintiff caused the sheriff of Apache County . . . to wrongfully sue out writ of attachment, . . . ". It is respectfully submitted that the words "wrongfully sue out" allege a conclusion of law and do not state the ultimate facts which plaintiff is entitled to know and have before him in the preparation of his Answer to said Counterclaim.

4. The allegations specifically quoted herein are vague, indefinite and uncertain and by reason thereof it is impossible for plaintiff to properly prepare his Reply to the said Counterclaim.

Dated April *15*, 1953.

M. V. Gibbons and McQuatters & Stevenson, By /s/ Wm. W. Stevenson, Attorneys for Plaintiff.

[fol. 61]

IN SUPERIOR COURT OF APACHE COUNTY

BILL OF PARTICULARS—Filed April 23, 1953

The following is a Bill of Particulars of plaintiff's demand in this cause and for the recovery of which this action is brought, to wit:

Date 1950		Explanation	Debit	Credit	Balance
Jan.	16	Account Forward			533.49
		Paid		40.00	493.49

Date	Explanation	Debit	Credit	Balance
	Merchandise	28.25		521.74
	Merchandise	5.50		527.24
Jan. 30	Credit cash		40.00	487.24
	Merchandise	22.00		509.24
		2.50		511.74
	Merchandise	1.40		513.14
Feb. 4	Merchandise	7.95		521.09
Feb. 6	Merchandise	11.00		
	Merchandise	3.75		535.84
Feb. 10	Merchandise	5.50		541.34
Feb. 16	Paid		40.00	501.34
	Merchandise	22.00		523.34
	Merchandise	1.25		524.59
Feb. 18	Merchandise	5.35		529.94
Feb. 25	Merchandise	5.54		535.48
	Merchandise	1.10		536.48
March 3	Paid on account		40.00	496.58
	Merchandise	16.50		
		6.25		519.33
[fol. 62]				
March 9	Paid on account		40.00	479.33
	Merchandise	22.00		
		2.10		
		1.65		505.08
March 16	Merchandise	11.00		516.08
March 23	Credit on account		40.00	476.08
	Merchandise	19.45		495.53
March 25	Merchandise	22.00		517.53
March 31	Merchandise	2.84		520.37
April 1	Merchandise	1.10		521.47
April 5	Credit cash		40.00	481.47
	Merchandise	11.00		
		6.25		498.72
April 7	Merchandise	11.00		509.72
April 13	Paid on account		40.00	469.72
	Merchandise	6.25		
		22.00		497.97
April 15	Merchandise	1.10		499.07
April 17	Merchandise	16.50		515.57

Date	Explanation	Debit	Credit	Balance
	Cash	37.50		553.07
	Merchandise	5.00		558.07
April 29	Merchandise	1.65		559.72
May 2	Merchandise	1.10		560.82
May 13	Merchandise	25.75		586.57
May 15	Merchandise	4.69		591.26
May 24	Merchandise	11.00		602.26
	Merchandise (5/5/50)	4.56		606.82
[fol. 63]				
June 8	Credit wool (152#)		70.00	536.82
	Merchandise	25.75		562.57
	Paid M. O. 6860		40.00	552.57
June 22	Merchandise	5.50		528.07
June 27	Paid		40.00	488.07
June 28	Merchandise	7.90		
		.70		496.67
July 5	Paid		40.00	456.67
Ju	Merchandise	22.00		478.67
July 13	Flour	5.00		483.67
July 17	Merchandise	5.50		489.17
July 29	Merchandise	16.50		505.67
July 31	Merchandise	8.75		514.42
August 3	Merchandise	3.30		517.72
	Paid cash & sheep		151.50	366.22
Oct. 14	Credit cash		5.00	361.22
1952				
Oct. 23	Received on account		280.00	81.22

Dated this 15th day of April, 1953.

McQuatters & Stevenson, By /s/ Wm. W. Stevenson,
Attorneys for Plaintiff.

STATE OF ARIZONA,
County of Coconino.—ss.

Hugh Lee, being first duly sworn, says that he is the plaintiff in the above entitled action and that the foregoing is a correct account of the plaintiff's claim on which action

[fol. 64] is brought, and that he verily believes it to be true.

/s/ Hugh Lee

Subscribed and sworn to before me this *21st* day of April, 1953.

/s/ Margaret M. Scott, Notary Public.

Seal

My Commission Expires:
December 18, 1956

Copy of the foregoing Bill of Particulars was mailed to W. E. Ferguson, attorney for defendants, at Holbrook, Arizona, in a sealed envelope, postage prepaid, this 22nd day of April, 1953.

McQuatters & Stevenson, By /s/ Wm. W. Stevenson, Attorneys for plaintiff.

[fol. 65]

IN SUPERIOR COURT OF APACHE COUNTY

OPINION AND ORDER—December 3, 1954

The Plaintiff, a non-Indian resident of Ganado, Apache County, Arizona, a licensed trader on the Navajo Reservation, instituted this action against the Defendants, Navajo Indians, residing on said Indian Reesrvation, (sic) for the value of goods, wares and merchandise sold and delivered to the Defendants. The Sheriff of Apache County served the summons and complaint on the Defendants and by virtue of a writ of attachment took into possession certain sheep belonging to said defendants.

The Defendants have filed a motion to dismiss this action on the grounds that the Court does not have jurisdiction of the persons or property of the Defendants for the following reasons:

1. Indian tribes are "subjects" of Federal law to the exclusion of State law and entitled to exercise their own inherent rights of self-government so far as they are in accord with Federal law;

2. That Indian tribes are under the exclusive jurisdiction of the Federal Government and therefore not subject to the laws of the states.

From the very beginning of our National existence we have been faced with the problems of our relations with Indian tribes who inhabited this continent when we came here. We invaded their territory, and took lands at a [fol. 66] great cost of war and blood-shed. Treaties ensued between our Governinent and these sovereign Indian nations to promote and establish peace. Sovereign rights of these people were acknowledged within boundaries known as reservations. They then owed no allegiance to or received protection from the respective states and territories wherein they resided. They were dependent upon the Government of the United States for their daily food and political rights, in accordance with the terms and provisions of the respective treaties between each of said Indian tribes and the United States. This was the condition of affairs at the time the leading case cited by the Defendants of Worcester vs. Georgia was decided in 1832.

The real question presented for decision is: Does the Navajo tribe, by virtue of its original tribal sovereignty, have exclusive jurisdiction within the Reservation over its members and their property in accordance with the terms and provisions of the treaties between the United States and the Navajo Tribe? It is generally conceded that the United States under such treaties and its practice of dealing with Indian tribes does have the power by Congressional enactment to govern the Navajo Indians in accordance therewith. What then, has been done by Congress and the Government, if anything, to change the original status that existed when the United States entered into these treaties with the Navajo Tribe as a sovereign power within the boundaries of its Reservation? There are numerous [fol. 67] statutes enacted by Congress relating to this subject, but the primary act which to my mind completely destroys the conception of two independent nations living together under and according to the terms of a treaty signed by them, is the granting by the United States to all Indians the great and extensive right of citizenship. Can it be said that after such an enactment Indians still

maintain their sovereign right to self-government with their primary allegiance to that government? Manifestly not. They were not required to go through the steps of naturalization and formally take the oath of allegiance as therein provided. This sweeping enactment bestowed upon them all of the rights of citizenship. Did not this enactment likewise require obligations of citizenship?

The State of Arizona has responded to this congressional enactment and through its Courts have determined:

1. That all Indian reservations in Arizona are within the political and governmental, as well as geographical, boundaries of the State and that the exception set forth in our Enabling Act applies to Indian lands considered as property, and not as a territorial area withdrawn from the sovereignty of the State of Arizona;

2. That Indians are qualified to serve as jurors, they are competent witnesses in judicial proceedings, may hold and operate a certificate of convenience and necessity as a common carrier, sue in their own right in the State Courts, [fol. 68] and that they are citizens and have the right to vote.

It seems to me that the decisions of our own Supreme Court are not fully and completely consistent in defining and establishing the status of the Indian tribes in Arizona. On the one hand the Court has extended to them all of the rights above enumerated as citizens of the United States and the State of Arizona. On the other hand the Supreme Court has upheld their inherent limited powers of self-government and generally speaking not subject to State law. To my mind these two conceptions of the status of Indians cannot be harmonized. No man can serve two masters, nor bear allegiance to two independent nations or communities. As citizens of Arizona they have the right and do participate in making the laws and it is axiomatic that those who make the laws must obey them in a democracy. I do not believe that the framers of our constitution of the United States and of the State of Arizona ever intended to grant suffrage to persons who were under no obligations to obey the laws enacted as a result of such grant. It is my opinion that Congress intended citizenship

of the United States to attach at the time the Indians become subject to the laws of the State or territory in which they reside. If that be true, then it must follow as the night the day that the Navajo Indians who have been declared to live within Arizona, as citizens of Arizona, are subject to the laws of Arizona. There is, of course, a [fol. 69] limitation to this sweeping statement: Lands upon which they reside are held in trust for them by the Government and those who deal with these people must do so under regulations of Congress and its duly appointed agents. This is done because in a sense they are minors and need some care and protection in their dealings. This does not mean that each transaction must be okayed by some high authority, but the granting of a license is a grant of authority to consummate transactions for which such license is granted. This relationship in a sense is a limited guardianship or tutorage relationship, whereby these Indians are being integrated into our political, social, and economic structure. We acknowledge their jurisdiction in tribal courts to school them in their rights of self-government and jurisprudence in order that they may more fully assume the duties of citizenship. The source of the power for these courts does not rest in its inherent natural powers retained from its original sovereignty, but rather permitted in this great democracy of ours for their schooling and for their education. It is my opinion that the grant of citizenship by the Government to the Navajo Indians and accepted by the State of Arizona has emancipated the Navajo Indians in all respects not expressly excluded by the Congress of the United States, such as the punishment of certain specific crimes and taxation.

To my mind the great weight of Arizona's decisions support the proposition that the Navajo Indians are citizens [fol. 70] of the United States and of the State of Arizona, and are subject to the laws of such State, except insofar as they are not in conflict with express reservations controlled by the Congress of the United States. Therefore, this Court does have jurisdiction of this case and the Plaintiff cannot be forced to try this matter before a tribal court, which does not have exclusive jurisdiction hereof.

It Is Hereby Ordered that the Motion to Dismiss Plaintiff's Complaint be, and the same is, hereby denied.

Dated at St. Johns, Arizona, this 3rd day of December, 1954.

/s/ J. Smith Gibbons, Judge of the Superior Court.

[fol. 71]

IN SUPERIOR COURT OF APACHE COUNTY

MOTION TO ASSOCIATE ATTORNEYS FOR DEFENDANTS —Filed June 13, 1955

Comes now W. E. Ferguson, Attorney for the defendants in the above entitled cause and moves the Court that Laurence Davis and Wilson, Compton and Wilson be associated with him as Attorneys for defendants in the above entitled cause.

/s/ W. E. Ferguson

The undersigned hereby consent that the said Laurence Davis and Wilson, Compton and Wilson be associated with W. E. Ferguson as Attorney for the defendants.

McQuatters & Stevenson, By /s/ Wm. H. Stevenson,
Flagstaff, Arizona, Attorneys for Plaintiffs.

[fol. 72]

IN SUPERIOR COURT OF APACHE COUNTY

AGREED STATEMENT OF FACTS AND STIPULATION—June 1, 1955

I

Come now the parties to the above entitled cause and stipulate to the following Agreed Statement of Facts:

1. All the allegations of the Amended Complaint of the Plaintiff herein are true except the allegation that there is now due and owing from the defendants to the plaintiff the sum of $361.22. Said figure was correct at the time of filing said Amended Complaint, but the defendants have subsequently paid the plaintiff $280.00 on account of said debt and consequently now owe the plaintiff the sum of $81.22 only. The Bill of Particulars filed herein, dated

April 15, 1953, is a true and correct statement of the account between plaintiff and defendants upon which this action is based.

2. The defendants are Navajo Indians, are duly enrolled members of the Navajo Tribe, and reside and have resided at all times concerned in this action on the Navajo Indian Reservation, to wit, at Steamboat Canyon near Ganado, Arizona.

3. The sales and deliveries of goods, wares, and merchandise recited in Paragraph II of the Amended Complaint herein, and the sales and payments described in the Bill of Particulars herein, occurred within the boundaries of the [fol. 73] Navajo Indian Reservation as defined in the act of Congress of June 14, 1934 (48 Stat. 960), on land that was at all times involved in this action a part of said Indian Reservation, and which was moreover at all times involved in this action within the exterior boundaries of Apache County as defined in section 17-102 A.C.A., (1939).

4. The summons in this case was served on the defendants and the property of the defendants seized under the Writ of Attachment herein was seized, by the Sheriff of Apache County, within the boundaries of the Navajo Indian Reservation, as above defined, on land of said Reservation, and within the boundaries of Apache County, as above defined.

5. The plaintiff is a non-Indian, and during the period in which he sold and delivered to the defendants the goods, wares and merchandise mentioned in Paragraph II of the Amended Complaint herein and made the sales and received the payments described in the Bill of Particulars herein was permitted by the Commissioner of Indian Affairs and the Secretary of the Interior of the United States of America to conduct the trading post and lunch counter at Ganado, Arizona, where the sale and delivery of such goods, wares, and merchandise took place and the payments on account thereof were made.

6. All facts recited in the Return of Sale of Personal Property filed herein on March 31, 1953, by John T. Crosby, [fol. 74] Sheriff of Apache County, are true; and the

Statement of Costs and Expenses Relating to Attachment and Order of Sale, attached thereto as Exhibit B, is true and correct, if this Court has jurisdiction of this case.

7. All parties to this action are and at all times involved herein have been citizens of the United States of America.

II

The plaintiff and the defendants hereby waive all right to present further evidence upon any issue presented by the plaintiff's Amended Complaint in this case and waive all further right to appear before the Superior Court of the State of Arizona in and for Apache County prior to entry of judgment on said Amended Complaint; provided, however, that it is stipulated and agreed that the defendants do not hereby concede the jurisdiction of said Court in this case, but expressly deny that the Court has or ever had jurisdiction over the persons of the defendants, over their property seized under writ of attachment herein, or over the subject matter of this action.

III

It is further stipulated and agreed that all further proceedings on the defendants' Counterclaim herein shall be deferred until after the Court has ruled on the Plaintiff's Motion to Dismiss heretofore filed on April 16, 1953.

[fol. 75] Dated this 1st day of June, 1955.

McQuatters & Stevenson, By Wm. W. Stevenson, 203 Talkington Building, Flagstaff, Arizona, Attorneys for Plaintiff.

By W. E. Ferguson, Holbrook, Arizona, Attorney for Defendants.

[fol. 76]

IN SUPERIOR COURT OF APACHE COUNTY

ORDER DISMISSING COUNTER-CLAIM—June 20, 1955

The Defendants having filed a counter-claim asking for affirmative relief, and the Plaintiff having filed a Motion

to dismiss said counter-claim, and the matter having been submitted to the Court for decision;

It Is Hereby Ordered that Plaintiff's Motion to Dismiss Counter-Claim be, and the same is, hereby granted and said Counter-Claim of the Defendants be, and the same is, hereby dismissed.

Dated at St. Johns, Arizona, this 20th day of June, 1955.

/s/ J. Smith Gibbons, Judge of the Superior Court.

[fol. 77]

IN SUPERIOR COURT OF APACHE COUNTY

ORDER FOR JUDGMENT—June 20, 1955

All legal questions presented by motions having been heretofore disposed of by orders of the Court, and the parties hereto having executed and filed herein Agreed Statement of Facts and Stipulation, thereby agreeing and stipulating that the Court could decide this matter on such statement of facts without further evidence, and the Court being advised in the premises;

It Is Hereby Ordered that the Plaintiff have judgment against the Defendants for the sum of Eighty Two and 22/100 Dollars ($82.22).

Dated at St. Johns, Arizona, this 20th day of June, 1955.

/s/ J. Smith Gibbons, Judge of the Superior Court.

[fol. 78]

IN SUPERIOR COURT OF APACHE COUNTY

NOTICE OF APPEAL—Filed August 17, 1955

Notice is hereby given that Paul Williams and Lorena Williams, the Defendants above named, hereby appeal to the Supreme Court of Arizona from the order dismissing Defendants' counter-claim entered in this action on June 20, 1955, and from the final judgment entered in this action on June 20, 1955.

We hereby certify that a copy of this Notice has been mailed to McQuatters and Stevenson, 203 Talkington Building, Flagstaff, Arizona, attorneys for the Plaintiff.

Dated this 17th day of August, 1955.

W. E. Ferguson, Holbrook, Arizona, Wilson, Compton and Wilson, Flagstaff, Arizona, Laurence Davis, Window Rock, Arizona, by /s/ Laurence Davis, Attorneys for the Defendants.

[fol. 79]

IN SUPERIOR COURT OF APACHE COUNTY

MINUTE ENTRIES

all located in Book 6, Superior Court Minutes

In Open Court February 2, 1953.

Honorable Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

Present Attorney M. V. Gibbons for the Plaintiff.

It Is Oredered (sic) that the Defendants appear and show cause on February 11, 1953, at 10 o'clock A. M., why the Court should not enter its order directing the sale of all the sheep and goats now held under a Writ of Attachment.

It Is Further Ordered that a copy of this order and petition be served upon the Defendants, or their attorney, at least five days before the hearing date.

In Open Court February 11, 1953.

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

Present the Plaintiff and his Attorneys M. V. Gibbons and Bill Stevenson of McQuatters and Stevenson; Attorney W. E. Ferguson, representing the Defendants.

Elmo Jarvis, Court Reporter was called in to report the proceedings.

Hugh Lee the Plaintiff was duly sworn and testified.

[fol. 80] The Plaintiff moved the Court for permission to amend their "Petition for Order of Sale of Sheep and Goats Now Held Under Attachment", to which the Defendants objected.

The Court: The Defendants' objection is overruled and the Plaintiff is granted permission to amend by inter-

lineation as follows: On page 1, line 15 after the word Arizona—has since the said 21st day of October, 1952, held the said property pursuant to said Writ of Attachment.

It Is Ordered that said Petition be, and the same is granted and the Sheriff is authorized to sell the property in the manner provided by law. The proceeds from the sale are to be deposited in the Clerk of the Superior Court's Office until further order of the Court.

It Is Further Ordered that a pre-trial conference be held in Holbrook, Arizona (for the convenience of counsel) on March 4, 1953.

In Chambers March 3, 1953

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

The Court: It Is Ordered that the 18 lambs be and they are hereby released from attachment, and the Sheriff of this County is authorized to return said property to the defendants.

The Court: Pursuant to stipulation of counsel,

It Is Ordered that the property which is subject to the Court Order of February 11, 1953, shall be sold by the [fol. 81] Sheriff in the manner provided by law, upon five successive days notice of sale.

In Open Court March 26, 1953

Hon. Judge J. Smith Gibbons presiding. Elmo Jarvis Deputy clerk present.

The Court: Based upon the Plaintiff's petition and stipulation of counsel, It Is Ordered, that the above specified orders of this Court be and the same are hereby modified in the manner hereinafter set forth and it is further ordered that the writs directing the sale and disposition of attached property heretofore issued out of this Court be quashed.

It Is Further Ordered that the attached property, described in the formal order and the increase thereof, to-wit, 18 lambs, or so much of said property together with

the increase as shall be necessary to satisfy the balance of plaintiff's claim, together with costs and probable costs, shall be sold by the Sheriff in the manner provided by law and in such manner as shall protect and preserve the increase, and that any property remaining be released to the defendants.

It Is Further Ordered that the Sheriff shall make return to this Court within 5 days from the date of such sale of what he has done pursuant to this order, and shall deposit with the Clerk of this Court the proceeds of such sale, pending final adjudication of the case.

[fol. 82] In Open Court November 16, 1953

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

Present William W. Stevenson, one of the plaintiff's attorneys; attorneys W. E. Ferguson and M. L. Crosse for the defendants.

Upon oral motion of W. E. Ferguson, It Is Ordered that Murray L. Crosse, Norman M. Littell, Charles M. Tansey, Jr. and Charles J. Alexander, be and they are hereby associated with W. E. Ferguson as counsel for the defendants.

In Open Court December 16, 1953

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

The Court: Due to the illness of Wm. Stevenson, It Is Ordered that the hearing in this matter be and the same is continued without date.

In Open Court March 1, 1954

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

Present Attorneys M. L. Cross, Charles M. Tansey, Jr., and W. E. Ferguson for the Defendant; Attorney Wm. M. Stevenson for the Plaintiff.

The Court: Based upon oral motion of W. E. Ferguson, It Is Ordered that Charles M. Tansey, Jr., is associated with counsel for the Defendant.

[fol. 83] The law matters were orally argued by both sides and It Is Ordered that the matter is taken under advisement.

In Chambers December 3, 1954

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

It Is Hereby Ordered that the Motion to Dismiss Plaintiff's complaint be, and the same is hereby denied, all in accordance with the written opinion and order signed and filed this day.

In Chambers May 9, 1955

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

It Is Ordered that the above entitled case is set for trial on Monday, June 13, 1955 at the hour of 10 A. M. and the clerk is directed to notify respective counsel.

In Chambers June 13, 1955

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

By stipulation of Counsel, It Is Ordered that Laurence Davis and Wilson, Compton and Wilson, be and they are hereby associated with W. E. Ferguson, as Attorney for the Defendants.

[fol. 84] In Chambers June 20, 1955

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

It Is Hereby Ordered that Plaintiff's Motion to Dismiss Counter-Claim be, and the same is, hereby granted, and said Counter-Claim of the Defendants be, and the same is, hereby dismissed.

It Is Hereby Ordered that the Plaintiff have judgment against the Defendants for the sum of Eighty Two and 22/100 Dollars ($82.22).

Approved.....Judge

Attest /s/ Merle W. Heap, Clerk.

[fol. 85]

IN SUPERIOR COURT OF APACHE COUNTY

STATEMENT OF POINTS TO BE RELIED UPON ON APPEAL—
Filed August 26, 1955

Defendants have not designated for inclusion in the record on appeal the complete record or all proceedings in the action.

The points which defendants will rely on are as follows:

1. That the Court had no jurisdiction over the persons of the defendants, because they are Navajo Indians and service of summons was made on the Navajo Indian Reservation.

2. That the Court had no jurisdiction over the subject matter of the action, because trading with Indians on the Navajo Indian Reservation is governed exclusively by Federal Laws and Federal Laws provide that debts of Indians arising out of such trade are unenforceal.

3. That the Court had no jurisdiction over the property seized under Writ of Attachment, for the reason that it was the property of Navajo Indians and was seized and levied upon on the Navajo Indian Reservation.

4. That the Court erred in dismissing defendants' Counter-Claim.

[fol. 86] Dated this 23rd day of August, 1955

W. E. Ferguson, Holbrook, Arizona; Laurence Davis, Window Rock, Arizona; Wilson, Compton & Wilson, By C. B. Wilson, Flagstaff, Arizona; Attorneys for Defendants and Appellants.

Received Copy August 24, 1955

McQuatters & Stevenson, By Hy C. McQuatters, Attorneys for Plaintiff.

[fol. 87]

IN SUPERIOR COURT OF APACHE COUNTY

DESIGNATION OF CONTENTS OF RECORD ON APPEAL—
Filed August 26, 1955

Notice Is Hereby Given, That Paul Williams and Lorena Williams, his wife, the defendants and appellants herein, deem the following portions of the record, proceedings and evidence necessary to present the questions involved on appeal to the Supreme Court:

1. Amended Complaint.
2. Bond on Attachment. (Filed October 20, 1952).
3. Writ of Attachment. (Filed October 23, 1952).
4. Motion to Dismiss Action Because of Lack of Jurisdiction. (Filed November 7, 1952).
5. Answer and Counter-Claim. (Filed November 7, 1952).
6. Answer to Counter-Claim. (Filed November 22, 1952).
7. Petition for Order of Sale of Sheep and Goats Now Held Under Attachment. (Filed February 2, 1953).
8. Order to Show Cause. (Filed February 2, 1953).
9. Response and Objections to Sale. (Filed February 11, 1953).
10. Transcript of Testimony of Hearing on Petition for Order of Sale of Sheep and Goats. (Dated February 11, 1953).

[fol. 88] 11. Supplemental Petition for Disposition of Attached Property. (Dated February, 1953).

12. Stipulation of Counsel Relating to Sale of Attached Property and to Hearing on Petition for Disposition of Attached Property. (Filed March 3, 1953).
13. Order of Disposition of Attached Property. (Filed March 3, 1953).

14. Order Relating to Sale of Attached Property. (Filed March 3, 1953).

15. Writ Directing Sale of Property. (Dated March 7, 1953). (Filed March 31, 1953).

16. Notice of Sale. (Filed March 31, 1953).

17. Petition for Modification of Orders Relating to Sale and Disposition of Attached Property. (Dated March 19, 1953).

18. Stipulation of Counsel Relating to Sale of Attached Property and Relating to the Hearing on Plaintiff's Petition for Modification of Orders Pertaining to Sale and Disposition on Attached Property. (Dated March 26, 1953).

19. Order of Sale and Disposition of Attached Property. (Filed March 26, 1953).

20. Writ Directing Sale and Disposition of Attached Property. (Dated March 26, 1953). (Filed March 31, 1953).

21. Return of Sale of Personal Property. (Filed March 31, 1953).

22. Motion to Dismiss Counterclaim. (Filed April 16, 1953).

23. Motion for More Definite Statement. (Filed April 16, 1953).

[fol. 89] 24. Bill of Particulars. (Filed April 23, 1953).

25. Opinion and Order. (Dated December 3, 1954).

26. Motion to Associate Attorneys for Defendants. (Filed June 13, 1955).

27. Agreed Statement of Facts and Stipulation. (Filed June 13, 1955).

28. Order Dismissing Counter-Claim. (Filed June 20, 1955).

29. Order for Judgment. (Filed June 20, 1955).

30. Notice of Appeal. (Filed August 17, 1955).

31. Receipt of Clerk for Cash Bond. (Dated August 17, 1955).

32. All Minute Entries and Orders Made in Said Cause.

33. All Minute Entries and Orders Made Subsequent to the Filing of this Notice pertaining to the Record on Appeal.

34. Statement of Points to be Relied Upon On Appeal.

35. This Notice.

36. Affidavit on Attachment.

Dated this 23rd day of August, 1955.

W. E. Ferguson, Holbrook, Arizona; Laurence Davis, Window Rock, Arizona; Wilson, Compton & Wilson, By C. B. Wilson, Flagstaff, Arizona; Attorneys for Defendants and Appellants.

[fol. 90] Received Copy August 24, 1955

McQuatters & Stevenson, By Hy C. McQuatters, Attorneys for Plaintiff.

[fol. 91]

MERLE W. HEAP
Clerk of Superior Court
Apache County
St. Johns, Arizona

September 27, 1955

Miss Eugenia Davis, Clerk
Arizona Supreme Court
Capitol Building
Phoenix, Arizona

Re: Civil No. 2913
Lee vs. Williams
(Apache County)

Dear Miss Davis:

We have received and filed your letter acknowledging receipt of the above numbered Civil file.

The record on appeal followed the Defendants Designation Of Contents Of Record On Appeal, except in the following numbers:

1. Designation No. 10, a transcript was never filed.
2. Designation No. 31, our office copy was retained for the Auditors and a statement by the Clerk was sent in it's place. No formal bond filed.
3. Designation No. 33, all minute enteries were included in No. 32.
4. Designation No. 36, affidavit was never filed.

With kindest regards, I remain,

Very truly yours,

/s/ MERLE W. HEAP
Merle W. Heap
Clerk Superior Court

[fol. 92] (The above letter is reproduced here in lieu and in explanation of the absence of appellants' designations numbered 31, 33, and 36. See "Designation of Contents of Record on Appeal," above.)

[fol. 93] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

No. 6172

PAUL WILLIAMS and LORENA WILLIAMS, husband and wife, Appellants,

v.

HUGH LEE, doing business as GANADO TRADING POST, Appellee.

Appeal from Superior Court of Apache County
Honorable J. Smith Gibbons, Judge

Judgment Affirmed in Part and Reversed in Part.

W. E. Ferguson, of Holbrook; Wilson, Compton & Wilson, of Flagstaff; Laurence Davis, of Phoenix, Attorneys for Appellants; and Murray L. Crosse, Field Solicitor, Department of the Interior, Gallup, N. M., of Counsel.

McQuatters & Stevenson, of Flagstaff, Attorneys for Appellee.

OPINION—Filed January 7, 1958

WINDES, Justice.

Suit in the superior court of Apache county by Hugh Lee dba Ganado Trading Post against Paul Williams and his wife, Lorena. Plaintiff was operating the Ganado Trading Post on the Navajo Indian reservation under authority given by the Secretary of Interior and Commissioner of Indian Affairs. Defendants are Indians, members of the Navajo tribe and residing on the reservation. Plaintiff operating as such trader sold articles to defendants on credit. There being a balance unpaid, this suit was filed. Service of summons was made upon defendants within the boundaries of the Navajo Indian reservation. At the time of commencing the action writ of attachment was procured [fol. 94] and levied upon sheep owned by the defendants. The levy was made upon the reservation.

Defendants moved to dismiss the action upon the ground that the court lacked jurisdiction and filed a counterclaim for wrongful attachment. Judgment was rendered for the plaintiff on his complaint and the counterclaim was dismissed. Defendants bring the matter before us claiming the trial court had no jurisdiction over their persons for the reason that a state officer cannot legally serve process upon a Navajo Indian within the boundaries of the reservation and that the superior court has no jurisdiction over the subject matter in that it has no power to enforce debts contracted on the reservation by tribal Indians in the course of dealing with a federally licensed Indian trader. There was no assignment of error nor argument questioning the correctness of the court's dismissal of the counterclaim; consequently there will be no further reference thereto.

The defendants were and are citizens of the United States, 8 U.S.C.A., section 1401, and were and are residents of the state of Arizona. Porter v. Hall, 34 Ariz. 308, 271 P. 411, overruled only as to right of suffrage in Harrison v. Laveen, 67 Ariz. 337, 196 P. 2d 456. In the Hall case this court said:

"We have no hesitancy in holding, therefore, that all Indian reservations in Arizona are within the political and governmental, as well as geographical boundaries of the state, and that the exception set forth in our Enabling Act applies to the Indian lands considered as property, and not as a territorial area withdrawn from the sovereignty of the state of Arizona. * * *"

Defendants contend that under the treaty with the Navajos of June 1, 1868, and federal statutes, 25 U.S.C.A. section 231, state agents may enter upon the reservation only for the purpose of inspection of health and educational conditions and enforcement of sanitation and quarantine regulations or to enforce compulsory school attendance laws. The contention is probably sound when the subject [fol. 95] matter involved is something that is of no concern to the state, something that is clearly within the exclusive jurisdiction of federal authorities. Unless permitted by the federal government, the state would be outside the sphere of its authority in attempting to interfere with the exclusive power of the federal government in administering the affairs of Indians and promoting their education and health. The state does have some degree of sovereignty over Indian reservations. Draper v. U. S., 164 U.S. 240, 17 S. Ct. 107, 41 L. Ed. 419. That case is authority for the proposition that in a case over which the state would have jurisdiction except for the fact that it occurred within the boundaries of an Indian reservation, it would have such jurisdiction after admission of the state to the Union except to the extent that sole and exclusive power over the reservation in the federal government is expressly reserved. Our view is that if the subject matter of the litigation is one that the state court has jurisdiction to try and determine and the federal government has not reserved sole and exclusive jurisdiction over the territory involved, the state officers may enter such territory under the state's sovereign authority and serve the necessary process to enable it to exercise its legitimate jurisdiction. Any other rule would lead to ridiculous results. For illustration, if defendants' reasoning be sound, a white man could murder another white man on or off an Indian reservation and would be

secure from Arizona prosecution so long as he could remain within the boundaries of a reservation. A civil dispute between two white traders on a reservation could not be tried for lack of service so long as the defendant remained on the reservation. In other words the state would have territorial jurisdiction without power to exercise it. Such is not and cannot be the law.

Appellant urges that Arizona courts have no jurisdiction to enforce payment against a Navajo Indian of a debt which arose out of his dealing with a federally licensed trader on [fol. 96] the reservation. It is not contended that the federal courts have such jurisdiction but, in defendants' motion to dismiss, it is contended that jurisdiction belongs on the reservation in the tribal court and no other. It is argued that the United States has exclusive jurisdiction over civil actions involving Indians except to the extent that Congress has conferred jurisdiction upon the state courts. This is not completely correct. The correct rule concerning the extent of state jurisdiction over Indian reservations is stated in U. S. v. McGowan et al, 302 U.S. 535, 58 S. Ct. 286, 82 L. Ed. 410, as follows:

> "Enactments of the federal government passed to protect and guard its Indian wards only affect the operation, within the colony (reservation), of such state laws as conflict with the federal enactments."

We do not question the authority of the federal government over tribal Indians and its right to deprive the state courts of jurisdiction to try and determine litigation of the nature herein involved, but we think the correct statement of the rule is that enunciated by Prof. Ray A. Brown, an eminent authority on Indian law, in his article, The Indian Problem and the Law, 39 Yale Law Journal, pages 314-315. The rule is stated in the following language:

> "While the theory of tribal allegiance and federal guardianship has served in criminal matters to place the Indian in a special category, such has not generally been the result in matters of civil rights. The Indian, whether tribal and a ward of the government or not, may, *except where specially restricted by act of Con-*

gress, make contracts, acquire and dispose of property, and sue and be sued in the state or federal courts." (Emphasis ours.)

To the same effect, 43 C.J.S., Indians, section 8(b):

"• • • an Indian may be sued in the state courts in any matter over which the United States has not expressly retained jurisdiction. Where not prohibited by statute, Indians may be sued on contracts or in tort."

Many courts have recognized the right of state courts to assume jurisdiction over disputes between Indians and whites. Swartzel et al. v. Rogers, 3 Kan. 374, was a suit [fol. 97] between Shawnee Indians to partition land located on the reservation. After declaring there was nothing to show the property was restricted, the court said:

"The fact that the contestants are Shawnee Indians, did not deprive the district court nor does it forbid to this court the exercise of jurisdiction either as to parties or subject matter. That the property belongs to Indians is not sufficient to place it beyond the jurisdiction of the state courts; and if the subject matter be within their jurisdiction, the parties, whether Indians or white men, have the right to litigate about it therein."

That case was cited as authority by the United States Supreme Court in the case of Felix v. Patrick, 145 U.S. 317, 12 S. Ct. 862, 36 L. Ed. 719. Stacy v. LaBelle, 99 Wis. 520, 75 N.W. 60, was a suit in the state court against an Indian for a balance due on account for goods, wares and merchandise sold to the Indian by the plaintiff who was an Indian trader on the reservation operating under and by virtue of a license issued by the United States. It was held that the state court had jurisdiction. Red Hawk v. Joines, 129 Ore. 620, 278 P. 572, was an action brought by an Indian who was an allottee without final patent on the Umatilla Indian reservation against a white man to replevy cattle taken from the Indian's possession. State jurisdic-

tion was sustained with a very thorough discussion of the problem of jurisdiction over the Indian, his personal property and over the reservation. Bonnett v. Seekins, 126 Mont. 24, 243 P. 2d 317, was a case where the Indian brought suit against a white to recover rent due under a lease of land held under an allotment. The lease had been approved by the Indian agency. It was held the state court had jurisdiction. To the same effect is Stevenson v. Christie, 64 Ark. 72, 42 S.W. 418, which was a suit by a white man against an Indian on a contract made in Indian territory as the result of the operation by the white man of a mercantile business in the Indian territory.

There are cases such as is before this court that were tried in the state courts wherein jurisdiction was apparently conceded or at least not presented. Tinker v. Midland Valley [fol. 98] Mercantile Co., 25 Okla. 160, 105 P. 333. This was a suit by an Indian trader against an Indian on a promissory note which defendant contended was void because it was for credit given in excess of that authorized by statute. The case was reviewed by the United States Supreme Court and reversed but not on jurisdictional grounds. Tinker v. Midland Valley Mercantile Company, 231 U.S. 681, 34 S. Ct. 252, 58 L. Ed. 434.

We are cited to a regulation of the Commissioner of Indian Affairs to the effect that a trader may extend credit to Indians but that such credit will be at the trader's own risk. The argument is advanced that this renders the debt unenforceable in the state court and ousts all courts of jurisdiction to hear the matter. Whether this regulation renders the debt unenforceable is not before us except to the extent that such enforcement may deprive the court of jurisdiction for the reason that the assignment of error in this matter presents only the jurisdictional question. We are clearly of the opinion that the regulation has nothing to do with the power of any court to determine a dispute concerning its application. If in fact the effect is to render the debt unenforceable, it is a proper defense on the merits but does not deprive the court of power to hear the matter.

When the action was commenced a writ of attachment was issued directing the sheriff to attach sheep belonging to defendants and located upon the reservation. The levy

was made. Before final disposition of the case plaintiff moved for authority to sell the property and impound the proceeds. In response to this motion defendants moved to quash the attachment and levy upon the ground, among others, that the court had no jurisdiction over the property proposed to be sold. The court ruled adversely to defendants and ordered the property sold. The stock was sold at public auction at the trading post of plaintiff. Costs of sale were $246.72. The final judgment was in the sum of $82.22. Defendants by express assignment contend the [fol. 99] court erred in permitting the sale and proceedings under the writ of attachment for the reason that the state court has no jurisdiction to interfere with property of tribal Indians within an Indian reservation.

We believe there can be no serious question that under the commerce clause of the United States constitution and under the right to protect the Indian and his property, the federal government may prescribe the conditions under which the tribal Indian may dispose of or others may acquire his property, while located on the reservation. If there be a federal statute or lawful regulation adopted pursuant to authority of federal statute prescribing restrictions for the buying or selling of an Indian's property on the reservation, a state court has no right nor power to enforce a state law concerning the disposition of such property which conflicts with the federal statute or regulation. U. S. v. McGowan et al, supra.

Pursuant to its power to supervise and control commerce, a federal license is required to trade upon the reservation. The federal statute provided that such trading shall be done only "under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians." 25 U.S.C.A., section 262. Among the regulations adopted is the following:

> "All trade with Indians shall be confined to the premises specified in the license, except the buying of livestock and livestock products, which shall be covered by special permits issued by the superintendent." 25 CFR 277.13.

We interpret this regulation as placing livestock in a special category and prohibiting buying of such property from the Indian without special permits issued by the superintendent. We can think of no purpose for the regulation except to protect the Indian in the sale of his livestock by giving the superintendent supervision over the sales. To permit the state law to reach into an Indian reservation and require the sale of his livestock at public sale under execution [fol. 100] clashes with the provisions of the foregoing regulation and operates to deprive the superintendent of his power of supervision over sales of Indian property and takes from the Indian the protective cloak of such supervision. We fail to see how such execution sales of livestock may be effected without substituting the state law on execution sale for the reservation law as prescribed by the regulation defining the method of selling Indian livestock. We think such substitution cannot be made and the state law cannot operate under such conditions. The attachment should have been quashed for lack of jurisdiction of the state court to force the sale thereunder.

Plaintiff advances the theory that because the Indians are citizens they must be treated as having been emancipated from government supervision. It is argued that since they enjoy the privileges of citizenship, they must bear the burdens the same as other citizens. The correct rule is that the mere fact Indians have become citizens does not deprive the federal government of the right and power to pass laws and authorize regulations for the protection of Indians as a tribal people. Hallowell v. U. S., 221 U.S. 317, 31 S. Ct. 587, 55 L. Ed. 750; U. S. v. Waller, 243 U.S. 452, 37 S. Ct. 430, 61 L. Ed. 843 (cited with approval in Begay v. Miller, 70 Ariz. 380, 222 P. 2d 624).

Judgment is reversed as to the levy and sale under attachment and otherwise affirmed.

Dudley W. Windes, Justice, Fred C. Struckmeyer, Jr., Justice, J. Mercer Johnson, Justice.

Concurring:

Levi S. Udall, Chief Justice, M. T. Phelps, Justice.

[fol. 101]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

No. 6172

PAUL WILLIAMS AND LORENA WILLIAMS, Appellants,

v.

HUGH LEE DBA GANADO TRADING POST, Appellee.

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
November 4, 1957

This case coming on for hearing today was argued for the appellants by Mr. Laurence Davis, and Mr. Murray L. Grosse was associated with attorney for appellants. Mr. William W. Stevenson argued for the appellee. Appellee was granted five days to reply to memo of authorities filed by appellant. The case was Ordered Submitted.

MINUTE ENTRY OF JUDGMENT—January 7, 1958

This case having been heretofore submitted, and the Court having duly considered same and being now advised in the premises, files its opinion. It is accordingly Ordered that the judgment of the trial court be affirmed in part and reversed in part: Judgment reversed as to levy and sale under attachment, and otherwise affirmed. Costs in this court to appellants.

Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 102]

IN SUPREME COURT OF ARIZONA

ORDER DISALLOWING COSTS—February 11, 1958

On February 11th, 1958, the Court entered the following Order in this case:

> Appellant having filed a Statement of Costs, and Appellee having made objections thereto, the matter was considered. It appears that we inadvertently neglected to state in the decision rendered that each party was to bear their own costs, and it is therefore ordered that no costs be allowed appellant.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 103]

SUPREME COURT OF THE UNITED STATES

No. 811—October Term, 1957

[Title omitted]

ORDER ALLOWING CERTIORARI—April 14, 1958

The petition herein for a writ of certiorari to the Supreme Court of the State of Arizona is granted. The Solicitor General is invited to file a brief setting forth the views of the United States.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILED
FEB 26 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. [redacted] 39

PAUL WILLIAMS and LORENA WILLIAMS,
husband and wife, *Petitioners,*

v.

HUGH LEE, doing business as GANADO TRADING POST.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.

PAUL WILLIAMS and LORENA WILLIAMS,
husband and wife, *Petitioners,*

v.

HUGH LEE, doing business as GANADO TRADING POST.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

PAUL WILLIAMS and LORENA WILLIAMS, your petitioners, pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Arizona, entered in the above-entitled case on January 7, 1958.

OPINIONS BELOW

The opinion of the Arizona Supreme Court (*infra*, Appendix A, pp. A1-A9) has not yet been reported. The opinion of the Superior Court of Arizona for Apache County (R. 65-70) appears in operative part in Appendix C (*infra*, pp. A12-A15).

JURISDICTION

1. The judgment of the Supreme Court of Arizona was entered on January 7, 1958 (*infra*, Appendix B, pp. A9-10). It is final by its terms.*

2. The federal question was raised as indicated at p. 5, *infra*. The excerpts from the record showing the raising of the federal question are set out in Appendix C, *infra*, pp. A10-A16.

3. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Whether the courts of Arizona have jurisdiction of an action brought against members of the Navajo Indian Tribe by a non-Indian in respect of a transaction arising within the boundaries of the Navajo Indian Reservation in Arizona.

2. Whether, where a non-Indian trader enters and trades on an Indian reservation pursuant to federal regulations, which declare that he extends credit to Indians only at his own risk, the courts of Arizona have jurisdiction to determine the claim of such non-Indian trader against Indians in respect of a purchase on credit.

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The federal and state constitutional provisions, statutes, and regulations that are involved in this case are set forth in Appendix D, *infra*, pp. A16-A21.

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* It was amended as to costs on February 13, 1958 (*infra*, Appendix F, p. A26).

STATEMENT

The facts out of which the present controversy arises are not in dispute and were, in large measure, stipulated (R. 72-75).

Petitioners, husband and wife, are duly enrolled members of the Navajo Tribe and citizens of the United States, and at all times here material resided within the boundaries of that portion of the Navajo Indian Reservation lying in Arizona, as defined by the Act of June 14, 1934, c. 521, 48 Stat. 960 (R. 72-73).

Respondent, a non-Indian, operated a general merchandise store known as the Ganado Trading Post, on land that is a part of the Navajo Reservation, pursuant to permission granted by the Secretary of the Interior and the Commissioner of Indian Affairs (R. 72, 73) under the authority of what is now 25 U.S.C. § 262 (*infra*, p. A18). Among the regulations for trade with Indians promulgated under the cited statute is 25 C.F.R. 277.17 (*infra*, pp. A20-A21), entitled "Credit at trader's risk," which provides *inter alia* that "A trader may extend credit to Indians, but such credit will be at the trader's own risk."

At petitioners' request, respondent sold them merchandise of the value of $361.22, on credit (R. 72). Following demands for payment, the present suit was brought in the Superior Court of Arizona for Apache County. Thereafter, petitioners paid $280 on account, leaving $81.22 still owing. All of the sales and deliveries of the merchandise, and all of the payments thereon, were made within the boundaries of the Navajo Indian Reservation. (R. 72-73.)

The summons in the present case was served on petitioners within the boundaries of the Navajo Indian

Reservation, and within the exterior boundaries of Apache County as defined by Arizona law (R. 73).

At the time of commencing the action, respondent procured a writ of attachment from the clerk of the Superior Court directing the sheriff to attach a band of sheep belonging to petitioners (R. 5). The sheriff duly seized these sheep, along with others alleged to be not owned by petitioners, inside the Navajo Reservation, on reservation land (R. 73, 6, 12). After the sheep had been in custody for some months, some were sold by the sheriff at respondent's trading post on the Navajo Reservation, and the remainder were returned to petitioners (R. 54, 55). The proceeds of the sale were $272, plus $2 advanced by petitioners (R. 56), but the costs of sale amounted to $246.72 (R. 56-57).

Petitioners moved to dismiss the action and to dissolve the attachment because of lack of jurisdiction, on the ground of their membership in the Navajo Tribe and residence on the Navajo Reservation (R. 7). This motion was denied (R. 65-70).

The parties thereafter stipulated the facts and waived further appearance in the Superior Court (R. 72-75). Thereupon the Superior Court entered judgment in favor of respondent in the sum of $82.22 (R. 77, 84), and dismissed the counterclaim (R. 76, 84).

Petitioners appealed to the Supreme Court of Arizona (R. 78), which sustained the jurisdiction of the Superior Court, though holding the attachment and sale illegal (Appendix A, *infra*, pp. A1-A9). Dismissal of the counterclaim, although noted in the statement of points on appeal (R. 85), was not assigned as error in petitioners' brief in the Supreme Court of Arizona.

HOW THE FEDERAL QUESTION WAS RAISED

1. Lack of jurisdiction in the trial court, based on petitioners' membership in the Navajo Tribe, their residence on the Navajo Reservation, and respondent's ownership of a trading post, was raised in a motion to dismiss for want of jurisdiction (R. 7, 9; *infra,* Appendix C, pp. A10-A11).

2. Petitioners' jurisdictional contentions were reasserted in successive stipulations in the trial court (R. 36, 49, 74; *infra,* Appendix C, pp. A11-A12).

3. Petitioners' contention that they were not subject to state jurisdiction as a matter of federal law was considered, discussed, and denied in the opinion of the Superior Court (R. 65-70; *infra,* Appendix C, pp. A12-A15).

4. Petitioners' statement of points on appeal asserted lack of jurisdiction over their persons because of their Indian status and reservation residence, and lack of jurisdiction over the subject matter of the action "because trading with Indians on the Navajo Indian Reservation is governed exclusively by Federal Laws and Federal Laws provide that debts of Indians arising out of such trade are unenforceable" (R. 85; *infra,* Appendix C, p. A16).

5. The opinion of the Supreme Court of Arizona (Appendix A, *infra,* pp. A1-A9) considered, discussed, and denied the foregoing federal claims put forward by petitioners.

REASONS FOR GRANTING THE WRIT

The decision below disregards and runs counter to more than a century of decisions here, ignores legislation by Congress, nullifies valid Federal regulations

governing trade with the Indians, and accordingly opens the door wide to systematic spoliation of the Indian wards of the United States. It is accordingly one of the most important Indian cases to reach this Court in many years.

First. From *Worcester* v. *Georgia,* 6 Pet. 515, decided in 1832, through *United States* v. *Kagama,* 118 U.S. 375, and a host of other cases, down to *Creek County* v. *Seber,* 318 U.S. 705, it has been settled that state law is ineffective to reach Indians except insofar as Congress has specifically and expressly made them subject to such law. And it has further been unquestioned—except for the ruling now sought to be reviewed—that the grant of citizenship to an Indian does not without more render him subject to state law, and that an Indian's citizenship or non-citizenship has no relevance when considering his amenability to state law. *E.g., Tiger* v. *Western Investment Co.,* 221 U.S. 286, 310-316; *United States* v. *Nice,* 241 U.S. 591, 598; *Brader* v. *James,* 246 U.S. 88, 96; *Winton* v. *Amos,* 255 U.S. 373, 391-392; *Creek County* v. *Seber,* 318 U.S. 705, 718.

When Congress considers that a particular tribe of Indians have so far advanced in adaptability as to be able to assume all of the duties of citizenship and to mingle on competitive terms with non-Indians, to the point where the laws of the several states may appropriately be made applicable to them, it has expressed such on intention in clear and unequivocal language.

Thus, in 1950, Congress declared that, effective two years later, "The courts of the State of New York under the laws of such State shall have jurisdiction in civil actions and proceedings between Indians or be-

tween one or more Indians and any other person or persons to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings, as now or hereafter defined by the laws of such State." Act of September 13, 1950, c. 947, 64 Stat. 845, 25 U.S.C. § 233 (*infra*, pp. A17-A18).

Similarly, in 1953, Congress provided that in California, Minnesota, Nebraska, Oregon, and Wisconsin—with the exception of one named reservation in each of three states (later amended to reduce the exceptions to two)—the states "shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere in the State." 28 U.S.C. § 1360, added by § 4 of the Act of Aug. 15, 1953, c. 505, 67 Stat. 588, 589, and as subsequently amended by § 2 of the Act of Aug. 24, 1954, c. 910, 68 Stat. 795 (*infra*, pp. A18-A20).

But Congress has never enacted any similar measure in respect of the Navajo Tribe. To the contrary, when Congress in 1949 passed an Act making Navajos (*inter alia*) subject to the laws of the states in which their lands were located, so that "in all cases the jurisdiction of the State, the Federal, and the tribal courts shall be concurrent," the President vetoed the bill, although it provided substantial rehabilitation measures for the tribes affected. Sec. 9 of S. 1407, 81st Cong., 1st sess.; Sen. Doc. 119, 81st Cong., 1st sess., pp. 1-4, 6; 95 Cong. Rec. 13659-13660, 14784-14785 (*infra*, Appen-

dix E, pp. A21-A26). In the following year, a similar act was passed, without the objectionable jurisdictional provisions, and this became law. Act of April 19, 1950, c. 92, 64 Stat. 44, 25 U.S.C. §§ 631-640. It may or may not be significant in the present connection that the court below recently adverted to the foregoing history when it held that the Arizona courts had no divorce jurisdiction over Navajo Indians resident on the Navajo Reservation. *Begay* v. *Miller*, 70 Ariz. 380, 385, 222 P. 2d 624, 627-628.

If Arizona desires to subject Navajo Indians to its laws it may do so, notwithstanding the limitations in the Enabling Act (Sec. 20, Act of June 20, 1910, c. 310, 36 Stat. 557, 569) and in its own Constitution. Art. 20, Fourth (*infra*, pp. A16-A17). For Congress in 1953 consented to the assumption of civil jurisdiction over Indians by any state that undertook to amend its constitution and laws accordingly. Secs. 6 and 7 of the Act of Aug. 15, 1953, *supra*, 67 Stat. at 590 (*infra*, p. A20). Arizona has taken no action pursuant to this consent, no doubt because it is not yet prepared to assume the police and school obligations that the exercise of civil jurisdiction over the Navajos would entail. But until the people of Arizona amend their Constitution pursuant to the Congressional consent of 1953, the courts of Arizona are not free to exercise jurisdiction over any Indians who reside on Indian reservations.

This is not to say that Arizona lacks territorial jurisdiction over the Navajo Reservation. That reservation is within Arizona's boundaries. *Harrison* v. *Laveen*, 67 Ariz. 337, 196 P. 2d 456. Arizona may accordingly tax property owned by a non-Indian within that reservation. *Thomas* v. *Gay*, 169 U.S. 264. An Arizona sheriff could effect valid service of process on a non-

Indian within the reservation where the lawsuit is one between non-Indians. Cf. *Langford* v. *Monteith*, 102 U.S. 145; *Utah & Northern R. Co.* v. *Fisher*, 116 U.S. 28, 31. And the fear of the court below that, if petitioners' "reasoning be sound, a white man could murder another white man on or off an Indian reservation and would be secure from Arizona prosecution so-long as he could remain within the boundaries of a reservation" (Appendix A, *infra*, p. A3), is plainly without foundation, in view of the consistent line of cases to the contrary, from *United States* v. *McBratney*, 104 U.S. 621, through *Draper* v. *United States*, 164 U.S. 240 (cited but mis-stated in the opinion below, *infra*, p. A3), down to *New York ex rel. Ray* v. *Martin*, 326 U.S. 496, all of which hold that a state may punish a non-Indian for an offense committed against another non-Indian within an Indian reservation.*

The principle of the foregoing cases is that a State has jurisdiction over the territory of an Indian Reservation within its boundaries—except in matters concerning Indians. Otherwise stated, jurisdiction over matters not concerning Indians is the extent of Arizona's jurisdiction within the Navajo Reservation. *Utah & Northern R. Co.* v. *Fisher*, 116 U.S. 28; *United States* v. *Sutton*, 215 U.S. 291; *Surplus Trading Co.* v. *Cook*, 281 U.S. 647, 651. The ruling below, which runs counter to that well settled principle, is therefore

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* Since the date of the decision below, the Supreme Court of Arizona has held that a Navajo Indian cannot be arrested by a state highway patrolman on U. S. Highway 66 where that highway passes through the Navajo Reservation. *In the Matter of Ted Denetclaw for a writ of Habeas Corpus*, No. 6519, decided January 28, 1958. There is no suggestion in the opinion that a non-Indian would be similarly exempt. *Accord, State of New Mexico* v. *Begay*, N. M. Sup. Ct., No. 6292, decided January 22, 1958.

erroneous—and, because it is so fraught with dangerous consequences for the many Indians in Arizona, as well as elsewhere, requires review and rectification by this Court.

Second. But there is another if narrower reason why the ruling below violates established Federal rights. Not only did the Arizona courts lack jurisdiction of petitioners' persons, they also lacked jurisdiction of the subject matter of the present proceeding, which arose out of a commercial transaction on a reservation between Indians and a Federally licensed Indian trader.

Here the source of Federal power is the Commerce Clause (Art. I, Sec. 8, cl. 3; *infra*, p. A16), the power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." That power is "exclusive and absolute," "a power as broad and as free from restrictions as that to regulate commerce with foreign nations." *Dick* v. *United States*, 208 U.S. 340, 356; *United States* v. *43 Gallons of Whiskey*, 93 U.S. 188, 194. And "commerce with the Indian tribes, means commerce with the individuals composing those tribes." *United States* v. *Holliday*, 3 Wall. 407, 417.

Pursuant to its power to regulate commerce with Indians, Congress has declared (25 U.S.C. § 262; *infra*, p. A18) that permission to trade with Indians is subject to "such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians."

Respondent availed himself of this permission to trade with petitioners within the Navajo Reservation (R. 72-73, ¶¶ 3, 5), and thereby subjected himself to the

elaborate and rigorous regulations governing such commerce. See 25 C.F.R. 277.1-277.28. And among those regulations, which the Commissioner prescribed "for the protection of said Indians" was one (25 C.F.R. 277.17; *infra*, pp. A20-A21) entitled "Credit at trader's risk," which stated, clearly and unequivocally, that "A trader may extend credit to Indians, but such credit will be at the trader's own risk."

The purpose of this regulation was plain. It was designed to protect an Indian from the consequences of his own improvidence. Cf. *Tinker* v. *Midland Valley Mercantile Co.*, 231 U.S. 681. The trader was amply protected if he sold for cash or if he took pawn pursuant to 25 C.F.R. 277.16, but any sale he made on unsecured credit was unenforceable. The regulation has no other meaning.

The court below said (Appendix A, *infra*, p. A6), "We are clearly of the opinion that the regulation has nothing to do with the power of any court to determine a dispute concerning its application. If in fact the effect is to render the debt unenforceable, it is a proper defense on the merits but does not deprive the court of power to hear the matter." Assuming the premise—which we do only for sake of argument—the result does not follow. For the court below denied the "proper defense" when it affirmed the judgment against petitioners. By so doing it not only ignored and nullified the regulation, it emphasized as well the utter impropriety of permitting state court adjudication of claims by non-Indians against Indians that arise out of trade conducted pursuant to, and only pursuant to Federal permission. The Arizona court's decision on the merits is thus a compelling demonstration of how its asserted jurisdiction over Indians impinges on Fed-

eral rights and jeopardizes Federal protection of tribal Indians.

Third. It is true that the court below held the levy and sale of petitioners' sheep illegal in reliance on another regulation promulgated pursuant to 25 U.S.C. § 262, viz., 25 C.F.R. 277.13 (*infra,* p. A20), to the effect that

> "All trade with Indians shall be confined to the premises specified in the license, except the buying of livestock and livestock products, which shall be covered by special permits issued by the superintendent."

The court below said (Appendix A, *infra,* p. A8), "We interpret this regulation as placing livestock in a special category and prohibiting buying of such property from the Indian without special permits issued by the superintendent." But this narrow view fails adequately to protect petitioners or any other Indians who are haled into state courts in respect of sales made on credit, on the reservation, by a licensed trader, in contravention of 25 C.F.R. 277.17 (*infra,* pp. A20-A21). For under the ruling below, the judgment against petitioners still stands, and it may be enforced by execution levied against other property belonging to petitioners not falling within the regulation concerning livestock. It is not necessary to conjure up imaginary consequences to foresee the havoc that the decision below will wreak upon the hitherto settled Federal administration of Indian affairs, and upon the Indian way of life itself.

CONCLUSION

The decision below is palpably erroneous. It disturbs Indian immunities that for over a hundred years had been well-settled, and threatens the economic survival of the many thousands of Indians who still live on reservations. The present petition for a writ of certiorari should therefore be granted.

Respectfully submitted.

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FEBRUARY, 1958.

APPENDIX A

OPINION BELOW

IN THE SUPREME COURT OF THE STATE OF ARIZONA

No. 6172

PAUL WILLIAMS and LORENA WILLIAMS, husband and wife,
Appellants,

v.

HUGH LEE, doing business as GANADO TRADING POST,
Appellee.

Appeal from Superior Court of Apache County
Honorable J. Smith Gibbons, Judge
Judgment Affirmed in Part
and Reversed in Part.

W. E. Ferguson, of Holbrook; Wilson, Compton & Wilson, of Flagstaff; Laurence Davis, of Phoenix, Attorneys for Appellants; and Murray L. Crosse, Field Solicitor, Department of the Interior, Gallup, N. M., Of Counsel.

McQuatters & Stevenson, of Flagstaff, Attorneys for Appellee.

WINDES, *Justice.*

Suit in the superior court of Apache county by Hugh Lee dba Ganado Trading Post against Paul Williams and his wife, Lorena. Plaintiff was operating the Ganado Trading Post on the Navajo Indian reservation under authority given by the Secretary of Interior and Commissioner of Indian Affairs. Defendants are Indians, members of the Navajo tribe and residing on the reservation. Plaintiff operating as such trader sold articles to defendants on credit. There being a balance unpaid, this suit was filed. Service of summons was made upon defendants within the boundaries of the Navajo Indian reservation. At the time of commencing the action writ of attach-

ment was procured and levied upon sheep owned by the defendants. The levy was made upon the reservation.

Defendants moved to dismiss the action upon the ground that the court lacked jurisdiction and filed a counterclaim for wrongful attachment. Judgment was rendered for the plaintiff on his complaint and the counterclaim was dismissed. Defendants bring the matter before us claiming the trial court had no jurisdiction over their persons for the reason that a state officer cannot legally service process upon a Navajo Indian within the boundaries of the reservation and that the superior court has no jurisdiction over the subject matter in that it has no power to enforce debts contracted on the reservation by tribal Indians in the course of dealing with a federally licensed Indian trader. There was no assignment of error nor argument questioning the correctness of the court's dismissal of the counterclaim, consequently there will be no further reference thereto.

The defendants were and are citizens of the United States, 8 U.S.C.A., section 1401, and were and are residents of the state of Arizona. Porter v. Hall, 34 Ariz. 308, 271 P. 411, overruled only as to right of suffrage in Harrison v. Laveen, 67 Ariz. 337, 196 P. 2d 456. In the Hall case this court said:

> "We have no hesitancy in holding, therefore, that all Indian reservations in Arizona are within the political and governmental, as well as geographical boundaries of the state, and that the exception set forth in our Enabling Act applies to the Indian lands considered as property, and not as a territorial area withdrawn from the sovereignty of the state of Arizona. * * *"

Defendants contend that under the treaty with the Navajos of June 1, 1868, and federal statutes, 25 U.S.C.A. section 231, state agents may enter upon the reservation only for the purpose of inspection of health and educa-

tional conditions and enforcement of sanitation and quarantine regulations or to enforce compulsory school attendance laws. The contention is probably sound when the subject matter involved is something that is of no concern to the state, something that is clearly within the exclusive jurisdiction of federal authorities. Unless permitted by the federal government, the state would be outside the sphere of its authority in attempting to interfere with the exclusive power of the federal government in administering the affairs of Indians and promoting their education and health. The state does have some degree of sovereignty over Indian reservations. Draper v. U. S., 164 U.S. 240, 17 S. Ct. 107, 41 L. Ed. 419. That case is authority for the proposition that in a case over which the state would have jurisdiction except for the fact that it occurred within the boundaries of an Indian reservation, it would have such jurisdiction after admission of the state to the Union except to the extent that sole and exclusive power over the reservation in the federal government is expressly reserved. Our view is that if the subject matter of the litigation is one that the state court has jurisdiction to try and determine and the federal government has not reserved sole and exclusive jurisdiction over the territory involved, the state officers may enter such territory under the state's sovereign authority and serve the necessary process to enable it to exercise its legitimate jurisdiction. Any other rule would lead to ridiculous results. For illustration, if defendants' reasoning be sound, a white man could murder another white man on or off an Indian reservation and would be secure from Arizona prosecution so long as he could remain within the boundaries of a reservation. A civil dispute between two white traders on a reservation could not be tried for lack of service so long as the defendant remained on the reservation. In other words the state would have territorial jurisdiction without power to exercise it. Such is not and cannot be the law.

Appellant urges that Arizona courts have no jurisdiction to enforce payment against a Navajo Indian of a debt which arose out of his dealing with a federally licensed trader on the reservation. It is not contended that the federal courts have such jurisdiction but, in defendants' motion to dismiss, it is contended that jurisdiction belongs on the reservation in the tribal court and no other. It is argued that the United States has exclusive jurisdiction over civil actions involving Indians except to the extent that Congress has conferred jurisdiction upon the state courts. This is not completely correct. The correct rule concerning the extent of state jurisdiction over Indian reservations is stated in U. S. v. McGowan et al, 302 U.S. 535, 58 S. Ct. 286, 82 L. Ed. 410, as follows:

> "Enactments of the federal government passed to protect and guard its Indian wards only affect the operation, within the colony (reservation), of such state laws as conflict with the federal enactments."

We do not question the authority of the federal government over tribal Indians and its right to deprive the state courts of jurisdiction to try and determine litigation of the nature herein involved, but we think the correct statement of the rule is that enunciated by Prof. Ray A. Brown, an eminent authority on Indian law, in his article, The Indian Problem and the Law, 39 Yale Law Journal, pages 314-315. The rule is stated in the following language:

> "While the theory of tribal allegiance and federal guardianship has served in criminal matters to place the Indian in a special category, such has not generally been the result in matters of civil rights. The Indian, whether tribal and a ward of the government or not, may, *except where specially restricted by act of Congress*, make contracts, acquire and dispose of property, and sue and be sued in the state or federal courts." (Emphasis ours.)

To the same effect, 43 C.J.S., Indians, section 8(b):

> "* * * an Indian may be sued in the state courts in any matter over which the United States has not expressly retained jurisdiction. Where not prohibited by statute, Indians may be sued on contracts or in tort."

Many courts have recognized the right of state courts to assume jurisdiction over disputes between Indians and whites. Swartzel et al. v. Rogers, 3 Kan. 374, was a suit between Shawnee Indians to partition land located on the reservation. After declaring there was nothing to show the property was restricted, the court said:

> "The fact that the contestants are Shawnee Indians, did not deprive the district court nor does it forbid to this court the exercise of jurisdiction either as to parties or subject matter. That the property belongs to Indians is not sufficient to place it beyond the jurisdiction of the state courts; and if the subject matter be within their jurisdiction, the parties, whether Indians or white men, have the right to litigate about it therein."

The case was cited as authority by the United States Supreme Court in the case of Felix v. Patrick, 145 U.S. 317, 12 S. Ct. 862, 36 L. Ed. 719. Stacy v. LaBelle, 99 Wis. 520, 75 N.W. 60, was a suit in the state court against an Indian for a balance due on account for goods, wares and merchandise sold to the Indian by the plaintiff who was an Indian trader on the reservation operating under and by virtue of a license issued by the United States. It was held the state court had jurisdiction. Red Hawk v. Joines, 129 Ore. 620, 278 P. 572, was an action brought by an Indian who was an allottee without final patent on the Umatilla Indian reservation against a white man to replevy cattle taken from the Indian's possession. State jurisdiction was sustained with a very thorough discussion of the problem of jurisdiction over the Indian, his personal property and over the reservation. Bonnett v.

Seekins, 126 Mont. 24, 243 P. 2d 317, was a case where the Indian brought suit against a white to recover rent due under a lease of land held under an allotment. The lease had been approved by the Indian agency. It was held the state court had jurisdiction. To the same effect is Stevenson v. Christie, 64 Ark. 72, 42 S.W. 418, which was a suit by a white man against an Indian on a contract made in Indian territory as the result of the operation by the white man of a mercantile business in the Indian territory.

There are cases such as is before this court that were tried in the state courts wherein jurisdiction was apparently conceded or at least not presented. Tinker v. Midland Valley Mercantile Co., 25 Okla. 160, 105 P. 333. This was a suit by an Indian trader against an Indian on a promissory note which defendant contended was void because it was for credit given in excess of that authorized by statute. The case was reviewed by the United States Supreme Court and reversed but not on jurisdictional grounds. Tinker v. Midland Valley Mercantile Company, 231 U.S. 681, 34 S. Ct. 252, 58 L. Ed. 434.

We are cited to a regulation of the Commissioner of Indian Affairs to the effect that a trader may extend credit to Indians but that such credit will be at the trader's own risk. The argument is advanced that this renders the debt unenforceable in the state court and ousts all courts of jurisdiction to hear the matter. Whether this regulation renders the debt unenforceable is not before us except to the extent that such enforcement may deprive the court of jurisdiction for the reason that the assignment of error in this matter presents only the jurisdictional question. We are clearly of the opinion that the regulation has nothing to do with the power of any court to determine a dispute concerning its application. If in fact the effect is to render the debt unenforceable, it is a proper defense on the merits but does not deprive the court of power to hear the matter.

When the action was commenced a writ of attachment was issued directing the sheriff to attach sheep belonging to defendants and located upon the reservation. The levy was made. Before final disposition of the case plaintiff moved for authority to sell the property and impound the proceeds. In response to this motion defendants moved to quash the attachment and levy upon the ground, among others, that the court had no jurisdiction over the property proposed to be sold. The court ruled adversely to defendants and ordered the property sold. The stock was sold at public auction at the trading post of plaintiff. Costs of sale were $246.72. The final judgment was in the sum of $82.22. Defendants by express assignment contend the court erred in permitting the sale and proceedings under the writ of attachment for the reason that the state court has no jurisdiction to interfere with property of tribal Indians within an Indian reservation.

We believe there can be no serious question that under the commerce clause of the United States constitution and under the right to protect the Indian and his property, the federal government may prescribe the conditions under which the tribal Indian may dispose of or others may acquire his property, while located on the reservation. If there be a federal statute or lawful regulation adopted pursuant to authority of federal statute prescribing restrictions for the buying or selling of an Indian's property on the reservation, a state court has no right nor power to enforce a state law concerning the disposition of such property which conflicts with the federal statute or regulation. U. S. v. McGowan et al, supra.

Pursuant to its power to supervise and control commerce, a federal license is required to trade upon the reservation. The federal statute provided that such trading shall be done only "under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the

protection of said Indians." 25 U.S.C.A., section 262. Among the regulations adopted is the following:

> "All trade with Indians shall be confined to the premises specified in the license, except the buying of livestock and livestock products, which shall be covered by special permits issued by the superintendent." 25 CFR 277.13.

We interpret this regulation as placing livestock in a special category and prohibiting buying of such property from the Indian without special permits issued by the superintendent. We can think of no purpose for the regulation except to protect the Indian in the sale of his livestock by giving the superintendent supervision over the sales. To permit the state law to reach into the Indian reservation and require the sale of his livestock at public sale under execution clashes with the provisions of the foregoing regulation and operates to deprive the superintendent of his power of supervision over sales of Indian property and takes from the Indian the protective cloak of such supervision. We fail to see how such execution sales of livestock may be effected without substituting the state law on execution sale for the reservation law as prescribed by the regulation defining the method of selling Indian livestock. We think such substitution cannot be made and the state law cannot operate under such conditions. The attachment should have been quashed for lack of jurisdiction of the state court to force the sale thereunder.

Plaintiff advances the theory that because the Indians are citizens they must be treated as having been emancipated from government supervision. It is argued that since they enjoy the privileges of citizenship, they must bear the burdens the same as other citizens. The correct rule is that the mere fact Indians have become citizens does not deprive the federal government of the right and power to pass laws and authorize regulations for the protection of Indians as a tribal people. Hallowell v. U. S.,

221 U.S. 317, 31 S. Ct. 587, 55 L. Ed. 750; U. S. v. Waller, 243 U.S. 452, 37 S. Ct. 430, 61 L. Ed. 843 (cited with approval in Begay v. Miller, 70 Ariz. 380, 222 P. 2d 624).

Judgment is reversed as to the levy and sale under attachment and otherwise affirmed.

DUDLEY W. WINDES
Justice

CONCURRING:

FRED C. STRUCKMEYER, JR.
Justice

LEVI S. UDALL
Chief Justice

J. MERCER JOHNSON
Justice

M. T. PHELPS
Justice

APPENDIX B

JUDGMENT BELOW

In the Supreme Court of Arizona, there is no separate document called a judgment. The opinion and the minute entry thereon constitute the judgment. Or, as it is sometimes stated, "The minute entry based on the opinion *is* the judgment."

The minute entry in the present case is as follows:

"IN THE SUPREME COURT OF THE STATE OF ARIZONA

No. 6172

"PAUL WILLIAMS AND LORENA WILLIAMS, *Appellants*,

VS.

HUGH LEE DBA GANADO TRADING POST, *Appellee*.

"January 7th, 1958:

This case having been heretofore submitted, and the Court having duly considered same and being now advised in the premises, files its opinion. It is accord-

ingly ORDERED that the judgment of the trial court be affirmed in part and reversed in part: Judgment reversed as to levy and sale under attachment, and otherwise affirmed. Costs in this court to appellants.'"*

APPENDIX C

EXCERPTS FROM THE RECORD SHOWING RAISING OF THE FEDERAL QUESTION

The numbering of the items follows the order set forth in the Petition, p. 5, *supra*.

1(a). Motion to Dismiss Action Because of Lack of Jurisdiction (R. 7):

"I

"Come now the Defendants in the above entitled and numbered action and move this Honorable Court for an order dismissing said action for the reason and upon the grounds that the Defendants are members of the Navajo Tribe of Indians and reside on the Navajo Reservation, where they resided at the time of the commencement of this action; that at the time of the commencement of this action the Plaintiff, as shown by the face of his complaint, was the owner of a trading post known as Ganado Trading post at Ganado, Apache County Arizona.

"II

"That at the time of the commencement of this action the Plaintiff caused to be issued out of the above entitled court, in the above entitled action, a writ of attachment which he caused to be levied on property of the Defendants and property of two of their children; that the property which was levied upon was located at a point called Steamboat Canyon, or in that vicinity, and was wholly on the Navajo Indian Reservation, and that the jurisdiction of any action belonged on said reservation in the Indian courts and not in the Superior Court of Apache County, Arizona, or any other court."

---

* For the amendatory order as to costs, see Appendix F, *infra*, p. A26.

1(b). Statement of Legal Points (R. 9):

"I.

"The defendants state as their legal points in support of their motion to dismiss this action for lack of jurisdiction in the court, that Navajo Indians may not be submitted to the general jurisdiction of a state court by action filed in the state court.

"II

"That the State of Arizona, by its enabling act, agreed that the jurisdiction of Navajo Indians pertaining to their affairs on the reservation may not be made the subject of Civil action in a state court."

2(a). Stipulation of Counsel, etc. (R. 35, 36-37):

"It Is Stipulated by and between counsel for plaintiff and defendants:

• • • •

"4. That the stipulations and agreements of counsel herein specified do not constitute a waiver of the fundamental rights in the premises, nor do such stipulations constitute defendants' recognition of the jurisdiction of this Court or the Sheriff of Apache County to issue a writ of attachment, to levy upon and seize property or to enter orders with respect to the disposition of the same within that portion of the Navajo Reservation situate in Apache County, Arizona."

2(b). Stipulation of Counsel, etc. (R. 47, 48-49):

"Now, Therefore, it is stipulated by and between counsel for plaintiff and defendants:

• • • •

"4. That the agreements and stipulations of counsel herein specified do not constitute a waiver of defendants' right in the premises except to the extent herein provided, nor do such agreement and stipulation constitute a recognition on defendants' part of the jurisdiction of this Court or the Sheriff of Apache County to levy upon and seize property of these defendants when such property is situate within that

portion of the Navajo Reservation situate in Apache County, Arizona."

2(c). Agreed Statement of Facts and Stipulation (R. 72, 74):

"Come now the parties to the above entitled cause and stipulate to the following Agreed Statement of Facts:

* * * *

"II

"The plaintiff and the defendants hereby waive all right to present further evidence upon any issue presented by the plaintiff's Amended Complaint in this case and waive all further right to appear before the Superior Court of the State of Arizona in and for Apache County prior to entry of judgment on said Amended Complaint; provided, however, that it is stipulated and agreed that the defendants do not hereby concede the jurisdiction of said Court in this case, but expressly deny that the Court has or ever had jurisdiction over the persons of the defendants, over their property seized under writ of attachment herein, or over the subject matter of this action."

3. Opinion of the Superior Court (R. 65-70):

* * * *

"The Defendants have filed a motion to dismiss this action on the grounds that the Court does not have jurisdiction of the persons or property of the Defendants for the following reasons:

"1. Indian tribes are 'subjects' of Federal law to the exclusion of State law and entitled to exercise their own inherent rights of self-government so far as they are in accord with Federal law;

"2. That Indian tribes are under the exclusive jurisdiction of the Federal Government and therefore not subject to the laws of the states.

"From the very beginning of our National existence we have been faced with the problems of our relations with Indian tribes who inhabited this continent when we came here. We invaded their territory, and took

lands at a great cost of war and blood-shed. Treaties ensued between our Government and these sovereign Indian nations to promote and establish peace. Sovereign rights of these people were acknowledged within boundaries known as reservations. They then owed no allegiance to or received protection from the respective states and territories wherein they resided. They were dependent upon the Government of the United States for their daily food and political rights, in accordance with the terms and provisions of the respective treaties between each of said Indian tribes and the United States. This was the condition of affairs at the time the leading case cited by the Defendants of Worcester v. Georgia was decided in 1832.

"The real question presented for decision is: Does the Navajo tribe, by virtue of its original tribal sovereignty, have exclusive jurisdiction within the Reservation over its members and their property in accordance with the terms and provisions of the treaties between the United States and the Navajo Tribe? It is generally conceded that the United States under such treaties and its practice of dealing with Indian tribes does have the power by Congressional enactment to govern the Navajo Indians in accordance therewith. What then, has been done by Congress and the Government, if anything, to change the original status that existed when the United States entered into these treaties with the Navajo Tribe as a sovereign power within the boundaries of its Reservation? There are numerous statutes enacted by Congress relating to this subject, but the primary act which to my mind completely destroys the conception of two independent nations living together under and according to the terms of a treaty signed by them, is the granting by the United States to all Indians the great and extensive right of citizenship. Can it be said that after such an enactment Indians still maintain their sovereign right to self-government with their primary allegiance to that government? Manifestly not. They were not required to go through the steps of naturalization and formally take the oath of allegiance as therein provided. This sweeping enact-

ment bestowed upon them all the rights of citizenship. Did not this enactment likewise require obligations of citizenship?

"The State of Arizona has responded to this congressional enactment and through its Courts have determined:

"1. That all Indian reservations in Arizona are within the political and governmental, as well as geographical, boundaries of the State and that the exception set forth in our Enabling Act applies to Indian lands considered as property, and not as a territorial area withdrawn from the sovereignty of the State of Arizona;

"2. That Indians are qualified to serve as jurors, they are competent witnesses in judicial proceedings, may hold and operate a certificate of convenience and necessity as a common carrier, sue in their own right in the State Courts, and that they are citizens and have the right to vote.

"It seems to me that the decisions of our own Supreme Court are not fully and completely consistent in defining and establishing the status of the Indian tribes in Arizona. On the one hand the Court has extended to them all of the rights above enumerated as citizens of the United States and the State of Arizona. On the other hand the Supreme Court has upheld their inherent limited powers of self-government and generally speaking not subject to State law. To my mind these two conceptions of the status of Indians cannot be harmonized. No man can serve two masters, nor bear allegiance to two independent nations or communities. As citizens of Arizona they have the right and do participate in making the laws and it is axiomatic that those who make the laws must obey them in a democracy. I do not believe that the framers of our constitution of the United States and of the State of Arizona ever intended to grant suffrage to persons who were under no obligations to obey the laws enacted as a result of such grant. It is my opinion that Congress intended citizenship of the United States to attach at the time the Indians become subject to the laws of the State or territory in

which they reside. If that be true, then it must follow as the night the day that the Navajo Indians who have been declared to live within Arizona, as citizens of Arizona, are subject to the laws of Arizona. There is, of course, a limitation to this sweeping statement: Lands upon which they reside are held in trust for them by the Government and those who deal with these people must do so under regulations of Congress and its duly appointed agents. This is done because in a sense they are minors and need some care and protection in their dealings. This does not mean that each transaction must be okayed by some high authority, but the granting of a license is a grant of authority to consummate transactions for which such license is granted. This relationship in a sense is a limited guardianship or tutorage relationship, whereby these Indians are being integrated into our political, social, and economic structure. We acknowledge their jurisdiction in tribal courts to school them in their rights of self-government and jurisprudence in order that they may more fully assume the duties of citizenship. The source of the power for these courts does not rest in its inherent natural powers retained from its original sovereignty, but rather permitted in this great democracy of ours for their schooling and for their education. It is my opinion that the grant of citizenship by the Government to the Navajo Indians and accepted by the State of Arizona has emancipated the Navajo Indians in all respects not expressly excluded by the Congress of the United States, such as the punishment of certain specific crimes and taxation.

"To my mind the great weight of Arizona's decisions support the proposition that the Navajo Indians are citizens of the United States and of the State of Arizona, and are subject to the laws of such State, except insofar as they are not in conflict with express reservations controlled by the Congress of the United States. Therefore, this Court does have jurisdiction of this case and the Plaintiff cannot be forced to try this matter before a tribal court, which does not have exclusive jurisdiction hereof."

4. Statement of Points To Be Relied Upon on Appeal (R. 85):

* * * *

"The points which defendants will rely on are as follows:

"1. That the Court had no jurisdiction over the persons of the defendants, because they are Navajo Indians and service of summons was made on the Navajo Indian Reservation.

"2. That the Court had no jurisdiction over the subject matter of the action, because trading with Indians on the Navajo Indian Reservation is governed exclusively by Federal Laws and Federal Laws provide that debts of Indians arising out of such trade are unenforceable.

"3. That the Court had no jurisdiction over the property seized under Writ of Attachment, for the reason that it was the property of Navajo Indians and was seized and levied upon on the Navajo Indian Reservation."

* * * *

APPENDIX D

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

1. The Constitution of the United States provides, Art. I, Sec. 8, Cl. 3:

"The Congress shall have Power * * *

"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

2. The Constitution of the State of Arizona provides, in pertinent part:

"ARTICLE 20

"ORDINANCE

"The following ordinance shall be inviolable without the consent of the United States and the people of this state:

* * * *

"Fourth. The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that, until the title of such Indian or Indian tribes shall have been extinguished, the same shall be, and remain, subject to the disposition and under the absolute jurisdiction and control of the congress of the United States."

3. Section 1 of the Act of Sept. 13, 1950, c. 947, 64 Stat. 845, 25 U.S.C. § 233; is as follows:

"§ 233. Jurisdiction of New York State courts in civil actions

"The courts of the State of New York under the laws of such State shall have jurisdiction in civil actions and proceedings between Indians or between one or more Indians and any other person or persons to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings, as now or hereafter defined by the laws of such State: *Provided*, That the governing body of any recognized tribe of Indians in the State of New York shall have the right to declare, by appropriate enactment prior to September 13, 1952, those tribal laws and customs which they desire to preserve, which, on certification to the Secretary of the Interior by the governing body of such tribe shall be published in the Federal Register and thereafter shall govern in all civil cases involving reservation Indians when the subject matter of such tribal laws and customs is involved or at issue, but nothing herein contained shall be construed to prevent such courts from recognizing and giving effect to any tribal law or custom which may be proven to the satisfaction of such courts: *Provided further*, That nothing in this section shall be construed to require any such tribe or the members thereof to obtain fish and game licenses from the State of New York for the exercise of any hunting and fishing rights provided

for such Indians under any agreement, treaty, or custom: *Provided further*, That nothing herein contained shall be construed as subjecting the lands within any Indian reservation in the State of New York to taxation for State or local purposes, nor as subjecting any such lands, or any Federal or State annuity in favor of Indians or Indian tribes, to execution on any judgment rendered in the State courts, except in the enforcement of a judgment in a suit by one tribal member against another in the matter of the use or possession of land: *And provided further*, That nothing herein contained shall be construed as authorizing the alienation from any Indian nation, tribe, or band of Indians of any lands within any Indian reservation in the State of New York: *Provided further*, That nothing herein contained shall be construed as conferring jurisdiction on the courts of the State of New York or making applicable the laws of the State of New York in civil actions involving Indian lands or claims with respect thereto which relate to transactions or events transpiring prior to September 13, 1952."

4. Section 1 of the Act of March 3, 1901, c. 832, 31 Stat. 1066, as amended, 25 U.S.C. § 262, is as follows:

"§ 262. Persons permitted to trade with Indians. Any person desiring to trade with the Indians on any Indian reservation shall, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians."

5. Section 1360 of 28 U.S.C., as added by Sec. 4 of the Act of Aug. 15, 1953, c. 505, 67 Stat. 588, 589, and subsequently amended by Sec. 2 of the Act of Aug. 24, 1954, c. 910, 68 Stat. 795, is as follows:

"§ 1360. State civil jurisdiction in actions to which Indians are parties

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	"Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State.

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or com-

munity in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section."

6. Sections 6 and 7 of the Act of Aug. 15, 1953, c. 505, 67 Stat. 588, 590, are as follows:

"Sec. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

"Sec. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall by affirmative legislative action, obligate and bind the State to assumption thereof."

7. 25 CFR 277.13 is as follows:

"25 CFR 277.13. *Trade confined to licensed premises.* All trade with Indians shall be confined to the premises specified in the license, except the buying of livestock and livestock products, which shall be covered by special permits issued by the superintendent."

8. 25 CFR 277.17 is as follows:

"277.17. *Credit at trader's risk.* A trader may extend credit to Indians, but such credit will be at the trader's own risk. All payments to Indians for products or labor must be made in lawful United States

money or in credit on the traders' books at the option of the Indian. Receipt must be given Indians for all articles they have sold to traders and on which they have requested book credit. These receipts must show the following information: (a) the date the transaction was made, (b) the amount paid the Indian, and (c) a description of the article or articles sold. All receipts issued by the trader for Indian products must be recorded in the traders' books in such a manner that all information contained in the receipt is duplicated. Receipts may be transferred upon order of the initial recipient if it is to his convenience that such a procedure be followed."

APPENDIX E

VETO OF 1949 NAVAJO-HOPI REHABILITATION BILL BECAUSE OF JURISDICTIONAL FEATURE

1. Section 9 of S. 1407 (95 Cong. Rec. 13659-13660; Sen. Doc. 119, 81st Cong., 1st sess., p. 6) provided in pertinent part as follows:

> "Sec. 9 From and after the effective date of this Act, all Indians within the tribal or allotted lands of the Navajo and Hopi Reservations shall be subject to the laws of the State wherein such lands are located, and shall have access to the courts of such State for the enforcement of their rights and the redress of wrongs to the same extent and in the same manner as any other citizen thereof; * * * *And provided further*, That nothing in this Act provided shall be deemed to impair the terms and obligations of any existing statute or treaty between the United States Government and the said Indians, nor take away the jurisdiction now exercised by the Federal Government or the tribes, but in all cases the jurisdiction of the State, the Federal, and the tribal courts shall be concurrent."

2. The text of the President's veto of the foregoing bill (Sen. Doc. 119, 81st Cong., 1st sess., pp. 1-4; 95 Cong. Rec. 14784-14785) was as follows:

"October 17, 1949

"To the Senate of the United States:

"I return herewith, without my approval, the enrolled bill (S. 1407) to promote the rehabilitation of the Navajo and Hopi Tribes of Indians and the better utilization of the resources of the Navajo and Hopi Indian Reservations, and for other purposes.

"The principal objective of this bill is the establishment of a ten-year program of capital and other improvements for the benefit and rehabilitation of the Navajo and Hopi Tribes of Indians. Appropriations would be authorized for this purpose totaling $88,570,000. Among the principal program goals specified and the amounts provided therefor would be: roads and trails, $20 million; school buildings and equipment, and other educational measure, $25 million; soil and water conservation and range improvement work, $10 million; and completion and extension of existing irrigation projects, and completion of the investigation to determine the feasibility of the proposed San Juan-Shiprock irrigation project, $9 million.

"I have withheld my approval with reluctance and only after the most careful consideration of all the provisions of S. 1407. The bill contains many meritorious features. In fact, its only objectionable provisions are those of section 9 which, with some qualifications, extend State civil and criminal laws and court jurisdiction to the Navajo-Hopi Reservations which are now under Federal and tribal laws and courts. Section 9 is heavily weighted with possibilities of grave injury to the very people who are intended to be the beneficiaries of the bill. Its many and serious defects outweigh, in my judgment, the merits of the rest of the bill.

"In the first place, the meaning of section 9 is obscure. While it seeks to subject the Navajo and Hopi Indians to the civil and criminal laws of the States where their reservations are situated, in certain circumstances and under certain conditions, the details of these circumstances and conditions cannot be determined, with any assurance of legal correctness, from

the language of section 9. For example, the right to inherit personal property, such as cattle, sheep, tools and utensils, is a matter of vital concern to the Navajo and Hopi Indians, as it is to other human beings. The descent of this property upon death is a matter which is now governed by their tribal practices and customs. Section 9 might be construed as abrogating these practices and customs at one fell swoop and imposing upon these Indians a system governing the descent and distribution of personal property which they neither want nor understand. Another matter of vital concern to the Navajo and Hopi Indians is their water rights, since they live in an arid country where water is the most precious of all natural resources. The jurisdiction to adjudicate, protect and enforce these water rights is now vested in the Federal courts where Indian rights are assured of full protection. Section 9 might be construed as transferring plenary power over Indian water rights to the State courts where there is much less assurance of protection for Indian rights, or it might be construed as leaving the existing Federal jurisdiction substantially unimpaired. These two illustrations are far from exhaustive, but they reveal quite plainly that the bill contains serious threats to the basic rights of these Indians, and at best would create a series of legal tangles which only years of expensive litigation could unravel. In the interim, many valuable interests might be lost and much irreparable injury suffered by the Navajo and Hopi peoples.

"A second major objection to section 9 is that its avowed purpose of accomplishing a broad-scale extension of State laws to the Navajo and Hopi reservations is in conflict with one of the fundamental principles of Indian law accepted by our Nation, namely, the principle of respect for tribal self-determination in matters of local government. The Congress and the executive branch have repeatedly recognized that so long as Indian communities wished to maintain, and were prepared to maintain, their own political and social institutions, they should not be forced to do otherwise. One of the most liberal self-government clauses ever written for an Indian tribe appears in section 6 of

the enrolled bill. That section declares that the Navajo people shall have 'the right to adopt a tribal constitution', which 'may provide for the exercise by the Navajo Tribe of any powers vested in the tribe or any organ thereof by existing law, together with such addition powers as the members of the tribe may, with the approval of the Secretary of Interior, deem proper to include therein', and which 'shall authorize the fullest possible participation of the Navajos in the administration of their affairs'. It would be inconsistent to enact into law section 9 concurrently with section 6. If either is to be accepted as meaning what it says, the other must be viewed as mainly rhetoric.

"Statutes have, of course, been enacted from time to time extending State criminal or civil laws to particular Indian communities. Primarily, these statutes dealt with comparatively small groups, the members of which through long association with neighboring whites, had reached the state where they were prepared to and wished to be governed by State and local law. The Navajo and Hopi Tribes are not in this category. They are, indeed, the Indians who are probably least prepared for such a major change.

"Ultimate acceptance of State jurisdiction is a logical consequence of our policy of assisting the Indians to develop their natural talents and physical resources in ways that will enable them to participate fully in our free, but vigorously competitive, society. In the long run, this process of adjustment to our culture can be expected to result in the complete merger of all Indian groups into the general body of our population. Yet the desirability of this result is no reason for compelling the Navajos and Hopis to accept legal integration long before they have been prepared for such a consequence through the orderly course of social and economic integration. Premature steps for tribal dissolution have invariably revealed that the process of cultural adjustment cannot be hastened, and may be retarded, by attempts at legal compulsion. For many years more the lives of the Navajo and Hopi peoples will continue to be governed by the isolation of the country where they live, the facts that four-fifths of them cannot speak English and that the

majority of their children have never been to school, the primitive background of their social concepts, the limitations of their economic resources, and other circumstances which tend to make their tribal governments a necessary instrument for their continued progress in civilization. It would be unjust and unwise to compel them to abide by State laws written to fill other needs than theirs.

"In reaching my decision to veto S. 1407, I have been greatly influenced by the attitude of the Navajo Indians toward the bill. The Navajo Tribe includes about 65,000 of the approximately 70,000 Indians affected by S. 1407. They greatly favor the long-range rehabilitation program which the bill proposes. But much as they favor the constructive provisions of the bill, they fear section 9 more. This is indicated by the fact that a meeting held on October 13, 1949, after final Congressional action on the bill, the Navajo Tribal Council, the Tribe's governing body, adopted a resolution urging that I veto S. 1407.

"In withholding approval from S. 1407, I am glad, to note that the principal feature of that measure, the ten-year program of capital improvements provided for in section 1, can be put into effect through normal appropriation procedures. Expenditures for substantially all of the purposes listed in section 1 are authorized by existing laws relating to Indian affairs. The purpose in proposing a special authorization for the ten-year program was to afford the Congress an opportunity to review that program as a whole before appropriation estimates were submitted for the individual items. The Congress, by its action on S. 1407, has now manifested its view that the capital improvements in question should be undertaken at once and prosecuted speedily to completion. Accordingly, I plan to include in the budget for the fiscal year 1951 appropriation estimates that will provide for initiation of the ten-year program. Since statutory authorization for almost all of these items already exists, the failure of S. 1407 to become law will not interpose a legal bar to the appropriation of the necessary funds, although it will result in the loss of some incidental features of S. 1407 that would have been of value to

the Indians. I would, of course, be glad to approve a bill that incorporated these features and the other provisions of S. 1407, without the objectionable provisions of section 9, should the Congress see fit to pass such a measure.

"HARRY S. TRUMAN.

"THE WHITE HOUSE,

"October 17, 1949."

APPENDIX F

AMENDED JUDGMENT AS TO COSTS

On February 13, 1958, the Supreme Court of Arizona entered the following supplementary order in the present case:

"Appellant having filed a statement of costs, and appellee having made objection thereto, the matter was considered. It appears that we inadvertently neglected to state in the decision rendered that each party was to bear their own costs. It is therefore ORDERED that no costs be allowed appellant."

FILED
AUG 23 1958
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

NO. 39

PAUL WILLIAMS and LORENA WILLIAMS, husband and wife, *Petitioners,*

v.

HUGH LEE, doing business as GANADO TRADING POST.

On Writ of Certiorari to the Supreme Court of the State of Arizona

BRIEF FOR THE PETITIONERS

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---

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the Supreme Court of Arizona (R. 54-55) is reported at 83 Ariz. 241 and 319 P. 2d 998. The opinion of the Superior Court of Arizona for Apache County (R. 38-42) is not reported.

JURISDICTION

The judgment of the Supreme Court of Arizona was entered on January 7, 1958 (R. 62) and amended as to costs on February 11, 1958 (R. 63); it is final by its terms. The petition for writ of certiorari was

filed on February 26, 1958, and granted on April 14, 1958 (R. 63). The federal question was duly raised and passed upon throughout the course of the proceedings below (Pet. 5; Appendix C, Pet. A10-A16). The jurisdiction of this Court rests on 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether the courts of Arizona have jurisdiction of an action brought against members of the Navajo Indian Tribe by a non-Indian with respect to a transaction arising within the boundaries of the Navajo Indian Reservation in Arizona.[1]

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The federal and state constitutional provisions, statutes, and regulations that are involved in this case are set forth in Appendix A, *infra*, pp. 25-29.

STATEMENT

The facts out of which the present controversy arises are not in dispute, and were in large measure stipulated (R. 42-44).

Petitioners, husband and wife, are duly enrolled members of the Navajo Tribe and citizens of the United States, and at all times here material resided within the boundaries of that portion of the Navajo Indian

---

[1] Under Point II, below, *infra*, pp. 19-23, petitioners argue that their immunity from State jurisdiction is as broad as it is stated in the question, and is not limited by the subject-matter of particular transactions so arising. For reasons set out below, pp. 20-21, petitioners no longer press the second question originally presented (Pet. 2).

Reservation lying in Arizona as defined by the Act of June 14, 1934, c. 521, 48 Stat. 960 (R. 43).

Respondent, a non-Indian, operated a general merchandise store known as the Ganado Trading Post, on land that is a part of the Navajo Reservation, pursuant to permission granted by the Secretary of the Interior and the Commissioner of Indian Affairs (R. 43) under the authority of what is now 25 U.S.C. § 262 (*infra*, p. 27). Among the regulations for trade with the Indians promulgated under the cited statute is 25 C.F.R. § 252.17 (*infra*, p. 29), entitled "Credit at trader's risk," which provides *inter alia* that "A trader may extend credit to Indians, but such credit will be at the trader's own risk."

At petitioners' request, respondent sold them merchandise of the value of $361.22, on credit (R. 42). Following demands for payment, the present action was brought in the Superior Court of Arizona for Apache County. Thereafter, petitioners paid $280 on account, leaving $81.22 still owing. All of the sales and deliveries of the merchandise, and all of the payments in respect thereof, were made within the boundaries of the Navajo Indian Reservation. (R. 42-43).

The summons in the present case was served on petitioners within the boundaries of the Navajo Indian Reservation, and within the exterior boundaries of Apache County as defined by Arizona (R. 43).

At the time of commencing the action, respondent procured a writ of attachment from the clerk of the Superior Court directing the sheriff of Apache County, Arizona, to attach a band of sheep belonging to petitioners (R. 3). The sheriff duly seized these sheep, along with others alleged to be owned by others than

petitioners, inside the Navajo Reservation, on reservation land (R. 43, 4, 8). After the sheep had been in custody for a number of months, some were sold by the sheriff at respondent's trading post on the Navajo Reservation, and the remainder were returned to petitioners (R. 31-32). The proceeds of the sale were $272, plus $2 advanced by petitioners (R. 32), but the costs of sale amounted to $246.72 (R. 32-33).

Petitioners moved to dismiss the action and to dissolve the attachment because of lack of jurisdiction, on the ground of their membership in the Navajo Tribe and residence on the Navajo Reservation (R. 4-5). This motion was denied (R. 38-42).

The parties thereafter stipulated the facts and waived further appearance in the Superior Court (R. 42-44). Thereupon the Superior Court entered judgment in favor of respondent in the sum of $82.22 (R. 45, 50),[2] and dismissed the counterclaim (R. 44-45, 49).

Petitioners appealed to the Supreme Court of Arizona (R. 45-46), which sustained the jurisdiction of the Superior Court, though holding the attachment and sale of the sheep illegal (R. 54-62). Dismissal of the counterclaim, although noted in the statement of points on appeal (R. 50), was not assigned as error in petitioners' brief in the Supreme Court of Arizona.

This Court granted certiorari (R. 63).

---

[2] Why judgment was entered for $82.22 in the face of the stipulation (R. 42) that only $81.22 was owing is not explained by anything in the present record.

SUMMARY OF ARGUMENT

I. Ever since *Worcester* v. *Georgia*, 6 Pet. 515, decided in 1832, it has been settled that state law is ineffective to reach Indians except insofar as Congress has specifically and expressly made them subject to such law. The fact that petitioners are citizens of the United States is quite immaterial. It is well settled that an Indian's citizenship is completely irrelevant when considering his amenability to state law. The test of state jurisdiction is not citizenship but Congressional action in the premises.

Whenever Congress has considered that particular Indians have so far advanced in adaptability so as to live among non-Indians on competitive terms, to the point where state law may appropriately be made applicable to them, it has expressed its consent to such a step in clear and unequivocal language. Several acts to that effect were passed in 1948, 1950, and 1953. But when Congress in 1949 passed a bill making the Navajos subject to state law, the President vetoed the bill, although apart from the jurisdictional features it benefited them; and in the following year Congress repassed the bill without the objectionable jurisdictional provisions. Moreover, Arizona has not sought to avail itself of a subsequent measure under the terms of which it might exercise jurisdiction over the Navajos.

Arizona has jurisdiction over the territory of the Navajo Reservation within its boundaries—except in matters concerning Indians. And the court below held, less than a month after the decision under review, that Arizona had no criminal jurisdiction over Navajo Indians on the Navajo reservation. *Application of Denetclaw*, 83 Ariz. 299, 320 P. 2d 697.

Since the action in the present case was brought against Navajo Indians, resident on the Navajo reservation, with respect to a transaction arising there, it was beyond the jurisdiction of the Arizona courts. That being so, the process of those courts was a nullity. It is accordingly unnecessary to determine whether the state sheriff had any physical right to serve such a scrap of paper within the reservation.

II. The Arizona courts also specifically lacked jurisdiction over the particular subject-matter of the present action, which arose out of a commercial transaction between Indians and a Federally licensed Indian trader. Here the source of Federal power is the Congressional power to regulate commerce with the Indians (which includes commerce with individual Indians), a power that is exclusive, absolute, and plenary.

Pursuant to that power, Congress has declared that trade with the Indians is subject to such regulations as the Commissioner may prescribe for their protection. Those regulations are elaborate and rigorous, and respondent subjected himself thereto when he traded with petitioners on the Navajo Reservation.

Petitioners do not now contend, in view of the textual history of those regulations, that the sale respondent made to them on credit was unenforceable.

But since the subject-matter of the transaction was trade between Indians and a Federally licensed Indian trader, a subject-matter within the exclusive competence of Congress, it cannot be made the subject of litigation in state courts. The court below held illegal the levy and sale of petitioners' sheep, relying on one of the Commissioners regulations that dealt with livestock. But this narrow view is insufficient to protect

petitioners, since the judgment now outstanding can be enforced against other property of theirs that is not within the regulation which protects livestock. Under the decision below, the property and way of life of all tribal Indians have thus been seriously jeopardized.

Consequently, reversal of the plainly erroneous judgment below should not be rested on the narrow ground of lack-of-jurisdiction-of-subject-matter, but rather on the broad and basic proposition that state courts have no jurisdiction over tribal Indians residing on Indian reservations in reference to any transactions arising there. That broader proposition has been recognized by Congress and by the President, and is solidly founded on an unbroken line of decisions of this Court over a period of more than a century and a quarter.

ARGUMENT

Petitioners' basic contention is that, since they are Indians and since the transaction out of which the present action arose took place on an Indian reservation, they cannot be sued in respect thereof in the courts of a State in the absence of Congressional consent to the exercise of such jurisdiction—and such consent has never been conferred.

Additionally, petitioners point out that, since the transaction out of which the present action arose was one between Indians and a Federally licensed Indian trader, the State courts had no jurisdiction of the subject-matter. But they go on to show that Indian immunity from State jurisdiction cannot properly be limited to subject-matter, and that the decisions of this Court and the uniform course of executive and

legislative action all combine in requiring that their exemption from State jurisdiction be placed on the broader ground of the basic contention stated in the preceding paragraph.

I. A State court has no jurisdiction of a suit by a non-Indian against an Indian arising out of a transaction taking place on an Indian reservation unless Congress has consented to the exercise of such jurisdiction; and no such consent has been given here.

From *Worcester* v. *Georgia*, 6 Pet. 515, decided in 1832, through *United States* v. *Kagama*, 118 U.S. 375, and a host of other cases, it has been settled that state law is ineffective to reach Indians except insofar as Congress has specifically and expressly made them subject to such law. The ruling below accordingly disregards and runs counter to more than a century of decisions here, nullifies the plain import of legislation enacted by Congress, and thus opens the door wide to systematic spoliation of the Indian wards of the United States. It is sufficient simply to examine some of the controlling precedents.

In *Worcester* v. *Georgia*, 6 Pet. 515, the State of Georgia, by Sec. 6 of its Act of December 19, 1829, purported to extend its civil and criminal laws over the Cherokees and the territory occupied by them. See 6 Pet. at 526. This Court, speaking through Chief Justice Marshall, held the extension void (6 Pet. at 561):

> "The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the

assent of the Cherokees themselves or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the Government of the United States.

* * * * * * * * *

"* * * the acts of Georgia are repugnant to the Constitution, laws, and treaties of the United States.

"They interfere forcibly with the relations established between the United States and the Cherokee Nation, the regulation of which, according to the settled principles of our Constitution, are committed exclusively to the government of the Union."

After *Ex parte Crow Dog,* 109 U.S. 556, which held that there was no federal jurisdiction to punish a murder committed by one Indian on another Indian within an Indian reservation, Congress amended the law to make such offenses triable in federal courts; and in *United States* v. *Kagama,* 118 U.S. 375, that jurisdiction was upheld over such offenses within a reservation located in the State of California. The Court said (118 U.S. at 383-384):

"* * * The statute itself contains no express limitation upon the powers of a State or the jurisdiction of its courts. If there be any limitation in either of these, it grows out of the implication arising from the fact that Congress has defined a crime committed within the State, and made it punishable in the courts of the United States. But Congress *has* done this, and *can* do it, with regard to all offenses relating to matters to which the federal authority extends. Does that authority extend to this case?

"It will be seen at once that the nature of the offense (murder) is one which in most all cases of its commission is punishable by the laws of the States, and within the jurisdiction of their courts. The distinction is claimed to be that the offense under the statute is committed by an Indian, that it is committed on a Reservation set apart within the State for residence of the Tribe of Indians by the United States, and the fair inference is that the offending Indian shall belong to that or some other Tribe. It does not interfere with the process of the state courts within the Reservation, nor with the operation of state laws upon white people found there. Its effect is confined to the acts of an Indian of some Tribe, of a criminal character, committed within the limits of the Reservation.

"It seems to us that this is within the competency of Congress. These Indian Tribes *are* the wards of the Nation. They are communities *dependent* on the United States; dependent largely for their daily food; dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court whenever the question has arisen.

Application of the foregoing principles—which, but for the opinion below, have never been doubted—makes it plain that, unless Congress has specifically consented to the exercise of Arizona's jurisdiction over

the Navajo Indians, the Arizona courts have no jurisdiction of the present action.

We note in passing that there is no support whatever for the ground taken by the Superior Court of Apache County in this case, that petitioners are subject to the jurisdiction of Arizona because they are citizens of the United States and of Arizona (R. 38-42). The rule is unquestioned that the grant of citizenship to an Indian does not without more render him subject to state law, and that an Indian's citizenship has no relevance whatever when considering his amenability to state law. E.g., *United States* v. *Rickert*, 188 U.S. 432, 445; *Tiger* v. *Western Investment Co.*, 221 U.S. 286, 310-316; *United States* v. *Nice*, 241 U.S. 591, 598; *United States* v. *Waller*, 243 U.S. 452, 459-460; *Brader* v. *James*, 246 U.S. 88, 96; *Winton* v. *Amos*, 255 U.S. 373, 391-392; *Creek County* v. *Seber*, 318 U.S. 705, 718. It is true that the court below did not rest its decision on petitioners' citizenship, but since the point is in the record it seems appropriate to scotch it at the outset.

The test of state jurisdiction here is not citizenship but Congressional action in the premises.

When Congress considers that a particular tribe of Indians have so far advanced in adaptability as to be able to assume all of the duties of citizenship, and to be able to live among and mingle with non-Indians on competitive terms, to the point where the laws of the several states may appropriately be made applicable to them, it has expressed its consent to such a step in clear and unequivocal language.

Thus, in 1948, Congress declared that—with an exception as to hunting and fishing rights—"The State

of New York shall have jurisdiction over offenses committed by or against Indians or Indian reservations within the State of New York to the same extent as the courts of the State have jurisdiction over offenses committed elsewhere within the State as defined by the laws of the state: * * *" Act of July 2, 1948, c. 809, 62 Stat. 1224, 25 U.S.C. § 232.

Two years later, in 1950, Congress consented to the exercise of New York jurisdiction in civil cases, effective in 1952. It said: "The courts of the State of New York under the laws of such State shall have jurisdiction in civil actions and proceedings between Indians or between one or more Indians and any other person or persons to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings, as now or hereafter defined by the laws of such State." Act of September 13, 1950, c. 947, 64 Stat. 845, 25 U.S.C. § 233 (*infra*, pp. 25-27).

Similarly, in 1953, Congress provided that in California, Minnesota, Nebraska, Oregon, and Wisconsin—with the exception of one named reservation in each of three states, later amended to reduce the exception to two—the states named "shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere in the State." 28 U.S.C. § 1360, added by § 4 of the Act of August 15, 1953, c. 505, 67 Stat.

588, 589, and as subsequently amended by § 2 of the Act of August 24, 1954, c. 910, 68 Stat. 795 (*infra*, pp. 27-28).

Despite this trend, however, Congress has never enacted any similar measure in respect of the Navajo Tribe; to the contrary. For when, in 1949, Congress passed an Act making Navajos (*inter alia*) subject to the laws of the states in which their lands were located, so that "in all cases the jurisdiction of the State, the Federal, and the tribal courts shall be concurrent," the President vetoed the bill, although it provided substantial rehabilitation measures for the tribes affected. Sec. 9 of S. 1407, 81st Cong., 1st sess.; Sen. Doc. 119, 81st Cong., 1st sess., pp. 1-4, 6; 95 Cong. Rec. 13659-13660, 14784-14785 (*infra*, pp. 30-35). Thereafter—in the following year—Congress passed a similar act but without the jurisdictional features that had been found objectionable, and this became law. Act of April 19, 1950, c. 92, 64 Stat. 44, 25 U.S.C. §§ 631-640. It is more than passing strange that the court below recently adverted to the foregoing history of Congressional dealing with state jurisdiction over the Navajos when it held that the Arizona courts had no divorce jurisdiction over two Navajo Indians resident on the Navajo Reservation who, after marriage pursuant to an Arizona license, had obtained a divorce from the Navajo tribal court. *Begay* v. *Miller*, 70 Ariz. 380, 385, 222 P. 2d 624, 627-628.[3]

[3] In that case, two Navajo Indians resident on the Navajo Reservation, who had been married pursuant to an Arizona license, were divorced by the Navajo tribal court. The former wife, being dissatisfied with the tribal court's decree, instituted a new proceeding for divorce in the State court—the Superior Court of Apache County—and obtained a new decree of divorce with provisions for alimony. The former husband disregarded the

At the present time, Arizona may subject Navajo Indians to its laws if it desires to do so, notwithstanding the limitations in the Arizona Enabling Act (Sec. 20, Act of June 20, 1910, c. 310, 36 Stat. 557, 569) and those in its own Constitution, Art. 20, Fourth (*infra*, p. 25). For Congress in 1953 consented to the assumption of civil jurisdiction over Indians by any State that undertook to amend its constitution and laws accordingly. Secs. 6 and 7 of the Act of August 15, 1953, *supra*, 67 Stat. at 590 (*infra*, pp. 28-29). Arizona has taken no action pursuant to this consent, no doubt because it is not yet prepared to assume the police,

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alimony terms of the Superior Court's decree, was found in contempt, and, after being arrested by a state sheriff on the Navajo Reservation, was imprisoned in a state jail. On habeas corpus, he was released, the Supreme Court of Arizona saying (70 Ariz. at 388, 222 P. 2d at 629-630), "We hold that the Superior Court of Apache County was without jurisdiction to enter the decree of divorce attacked in this instant case; the decree of the tribal court being conclusive, hence the order holding petitioner in contempt of its decree was a nullity, which entitles the petitioner to his discharge on habeas corpus."

The decision recognized the competency of the tribal court to grant the divorce, and gave recognition to its decree. Thus, in effect, it gave full faith and credit to that decree. But the failure of the Superior Court of Apache County to give the tribal court's decree full faith and credit, no matter how erroneous such failure might be, would hardly render the Superior Court's decree a nullity. Therefore, since the Supreme Court of Arizona (70 Ariz. at 388, 222 P. 2d at 629-630) stated that the question was whether the Superior Court of Apache County had jurisdiction, since the Supreme Court of Arizona did not place its decision on full faith and credit, since that court discussed at length President Truman's veto of the Navajo-Hopi Act because of its jurisdictional features, and since the case arose on collateral attack on the Superior Court decree by way of habeas corpus, we feel justified in giving *Begay* v. *Miller* the effect attributed to it in the text, namely, that the case holds that Arizona courts have no divorce jurisdiction over Navajo Indians resident on the Navajo Reservation.

school, road construction, and other obligations which the exercise of civil jurisdiction over the Navajos would entail. But until the people of Arizona amend their Constitution pursuant to the Congressional consent of 1953, the courts of Arizona are not free—by way of a judicial short-cut such as was attempted in the opinion below—to exercise civil jurisdiction over any Indians who reside on Indian reservations.[4]

That is not to say that Arizona lacks territorial jurisdiction over the Navajo Reservation. That Reservation is within Arizona's boundaries. See *Harrison* v. *Laveen,* 67 Ariz. 337, 196 P. 2d 456, which recognized the Indians' right to vote in Arizona. Arizona may accordingly tax property owned by a non-Indian within that Reservation. *Thomas* v. *Gay,* 169 U.S. 264. An Arizona sheriff could effect valid service of process on a non-Indian within the Reservation where the lawsuit is one between non-Indians. See *United States* v. *Kagama,* 118 U.S. 375, 383, quoted *supra* at p. 10; *Langford* v. *Monteith,* 102 U.S. 145, 147; *Utah & Northern R. Co.* v. *Fisher,* 116 U.S. 28, 31.

The fear of the court below, that if petitioners' jurisdictional contentions were sustained, "a white man could murder another white man on or off an Indian reservation and would be secure from Arizona prosecution so long as he could remain within the boundaries of a reservation" (R. 56-57), is plainly without foundation, in view of the consistent line of cases to the contrary, from *United States* v. *McBrat-*

[4] There remains a serious question whether Navajo consent would also be necessary before the Act of August 15, 1953, can be given full effect, but since Arizona has taken no steps to avail itself of that Act's terms, it is not necessary to pursue that inquiry in this case.

ney, 104 U.S. 621, through *Draper* v. *United States,* 164 U.S. 240 (cited but mis-stated in the opinion below, R. 56),[5] down to *New York ex rel. Ray* v. *Martin,* 326 U.S. 496, all of which hold that a State may punish a non-Indian for an offense committed against another non-Indian within an Indian reservation.

The fear expressed by the court below is therefore unfounded—and yet the same court recognized, only three weeks after the ruling now under review, that the Arizona courts had no criminal jurisdiction over a Navajo Indian violating state law on a highway passing through the Navajo Reservation. *Application of Denetclaw,* 83 Ariz. 299, 320 P. 2d 697. The Supreme Court of New Mexico, a few days earlier, had decided the same point in an identical case arising on the portion of the Navajo Reservation that is within New Mexico. *State* v. *Begay,* 63 N.M. 409, 320 P. 2d 1017, certiorari denied, 357 U.S. 918. The reason is plain: Congress has not consented to the exercise of state jurisdiction over Navajo Indians residing on the Navajo Reservation. But non-Indians guilty of similar conduct as Denetclaw and Begay, and at precisely

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[5] "That case [*Draper*] is authority for the proposition that in a case over which the state would have jurisdiction except for the fact that it occurred within the boundaries of an Indian reservation, it would have such jurisdiction after admission of the state to the Union except to the extent that sole and exclusive power over the reservation in the federal government is expressly reserved." All that was decided in *Draper* was that Montana had jurisdiction over an offense committed by a non-Indian against another non-Indian within the Crow Reservation. The case is no authority for, and has nothing to do with, state jurisdiction over Indians either as to criminal or civil matters arising within an Indian reservation.

the same places on the same highways, could not hope to escape punishment by the respective States involved.

The sum of the foregoing cases is that a State has jurisdiction over the territory of an Indian reservation within its boundaries—except in matters concerning Indians. Otherwise stated, jurisdiction over matters not concerning Indians is the extent of Arizona's jurisdiction within the Navajo Reservation. *Utah & Northern R. Co.* v. *Fisher,* 116 U.S. 28; *United States* v. *Sutton,* 215 U.S. 291; *Surplus Trading Co.* v. *Cook,* 281 U.S. 647, 651. The decision below, which runs counter to that well settled rule, is therefore erroneous and must be reversed.

It only remains to consider the issue to which the court below devoted most of its reasoning (R. 55-59), namely, petitioners' contention that Arizona had no power to serve process on the Reservation in a case of this character.

Petitioners' position had support in the opinions of this Court. Thus, in *United States* v. *Kagama,* 118 U.S. 375, upholding federal jurisdiction in a case of murder of an Indian by Indians on an Indian reservation within the boundaries of a State, the Court pointed out that its decision (118 U.S. at 383) "does not interfere with the process of the state courts within the Reservation, nor with the operation of state laws upon white people found there." In *Langford* v. *Monteith,* 102 U.S. 145, upholding state jurisdiction over a civil action between white men for the possession of real property on an Indian reservation within a territory, the Court said (p. 147) that, in the absence of anything excluding the reservation from territorial jurisdiction, "the land held by them [the Indians] is

a part of the Territory and subject to its jurisdiction, so that process may run there, however the Indians themselves may be exempt from that jurisdiction." Similarly, in *Utah & N. R. Co.* v. *Fisher,* 116 U.S. 28, in the course of sustaining the right of a territory to tax non-Indian property in an Indian reservation within its borders, the Court said (p. 31): "It has therefore been held that process of its courts may run into an Indian reservation of this kind, where the subject matter or controversy is otherwise within their cognizance."

Since, in the present case, as we have shown, jurisdiction over petitioners was plainly outside the cognizance of the state courts, petitioners below had substantial basis for contending that process in such action did not run within the reservation.

But we suggest that it is not necessary to decide the question of process. It is sufficient for disposition of the present case to hold that the Arizona courts had no jurisdiction, a holding that would render their process a nullity here and make it unnecessary to determine whether there was any physical right to serve such a scrap of paper within the reservation.

Such an approach would parallel that of the court below in *Begay* v. *Miller,* 70 Ariz. 380, 222 P. 2d 624, already discussed *supra,* pp. 13-14. There, after releasing the petitioner in consequence of its holding that the decree for contempt for which he had been confined was a nullity, the court below felt it unnecessary to consider the other question in the case, namely, whether the Arizona sheriff acted properly in serving such void process and arresting petitioner within the Navajo Reservation. We urge a similar disposition here.

II. The circumstance that the transaction in suit arose out of federally regulated trade with Indians is an additional reason why the subject matter was beyond the jurisdiction of the State court, but both proper protection of the Indians' interests and adherence to prior decisions require that this Court's decision be based on the broader ground of lack of jurisdiction over tribal Indians in reference to any cause of action arising on an Indian reservation.

There is another if narrower reason why the decision below is violative of hitherto established Federal immunities. Not only did the Arizona courts lack jurisdiction over tribal Indians residing on an Indian reservation with respect to any cause of action arising there, but the Arizona courts specifically lacked jurisdiction over the particular subject-matter of the present action, which arose out of a commercial transaction between Indians and a Federally licensed Indian trader.

On this phase of the case, the source of Federal power is the Commerce Clause (Art. I, Sec. 8, cl. 3; *infra,* p. 25), the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." That power of regulating commerce with the Indians is "exclusive and absolute"; it is "a power as broad and as free from restrictions as that to regulate commerce with foreign nations." *Dick* v. *United States,* 208 U.S. 340, 356; *United States* v. *43 Gallons of Whiskey,* 93 U.S. 188, 194. And "commerce with the Indian tribes, means commerce with the individuals composing those tribes." *United States* v. *Holliday,* 3 Wall. 407, 417.

Pursuant to its power to regulate commerce with the Indians, Congress has declared (25 U.S.C. § 262;

infra, p. 27) that permission to trade with the Indians is subject to "such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians."

Respondent availed himself of this permission to trade with petitioners within the Navajo Reservation (R. 43, ¶¶ 3, 5), and thereby subjected himself to the elaborate and rigorous regulations governing such commerce. See 25 C.F.R. §§ 252.1-252.28, *Traders on Navajo, Zuni, and Hopi Reservations.*[6] Among those regulations which the Commissioner promulgated "for the protection of said Indians" was one (25 C.F.R. § 252.17; *infra*, p. 29) entitled "Credit at trader's risk," which stated that "A trader may extend credit to Indians, but such credit will be at the trader's own risk."

In our Petition, we advanced the view (Pet. 2, Question 2; Pet. 11-12) that this regulation rendered the present sale on unsecured credit unenforceable.

Investigation of the earlier versions of that regulation convinces us that this contention is untenable. As originally promulgated, the regulation read (General Indian Regulations of June 29, 1927, ¶ 22):

> "Credit to Indians will be at the trader's own risk, as no assistance will be given by Government officials in the collection of debts against Indians. Traders shall not accept pawns or pledges by Indians to obtain credit or loans."

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[6] We cite from the regulations as currently renumbered effective January 1, 1958, when they became Part 252 of Title 25, C.F.R. In the prior proceedings herein, they are referred to under their earlier numbering, when they constituted Part 277 of the same title. The 1958 revision effected no change in language or substance under the present heading, but only a renumbering.

In November 1933, an association of Indian traders meeting at Gallup, N.M., asked for the deletion of the second clause of the first sentence; they did not question the position that the Bureau of Indian Affairs should not act as a collection agency, but they felt that its agent should use at least moral suasion to persuade Indians to meet their obligations. Accordingly, in due course the first sentence was changed to read as it does now, and the second sentence was deleted. At present the regulations affirmatively provide for taking pawns and pledges. 25 C.F.R. § 252.16.

But the subject-matter of the transaction was trade between Indians and an Indian trader licensed pursuant to Federal law. This is a subject-matter expressly and exclusively delegated to Congress by the Constitution itself, and accordingly it cannot be made the subject of litigation in state courts as long as 25 U.S.C. § 262 (*infra*, p. 27) remains in force.

It is true that the court below held illegal the levy and sale of petitioners' sheep, relying on another regulation promulgated pursuant to 25 U.S.C. § 262, namely, 25 C.F.R. § 252.13 (*infra*, p. 29), to the effect that

> "All trade with Indians shall be confined to the premises specified in the license, except the buying of livestock and livestock products, which shall be covered by special permits issued by the superintendent."

The court below said (R. 61), "We interpret this regulation as placing livestock in a special category and prohibiting buying of such property from the Indian without special permits issued by the superintendent." But this narrow view fails adequately to protect petitioners or any other Indians who are

hailed into state courts in respect of sales made on the reservation by a licensed trader. Even in this case, the expenses of the sale of the sheep that yielded $272 (R. 32) came to $246.72 (R. 33). And while the judgment against petitioners and the rationale of the opinion below still stand, that judgment may be enforced by execution levied against other property belonging to petitioners which does not fall within the regulation concerning livestock.

It is therefore quite unnecessary to conjure up imaginary horribles to foresee the havoc that the decision below will wreak upon the hitherto settled Federal administration of Indian affairs, and upon the Indian way of life itself.

Indeed, the circumstances of the present case demonstrate that it will not be a sufficient protection of tribal Indians to rest reversal of the plainly erroneous judgment below on the narrower ground of lack-of-jurisdiction-of-subject-matter. What is needed is a reiteration of the broad proposition set forth in Point I of the present brief, that certainly in the absence of Congressional consent, state courts have no jurisdiction over tribal Indians residing on Indian reservations as to any transaction arising there.

That broader proposition has a sound foundation in the decisions of this Court for a century and a quarter. That broader proposition was recognized by the Executive when President Truman vetoed the Navajo-Hopi Rehabilitation Bill that proposed to give state courts concurrent jurisdiction over the Indians of those two tribes. That broader proposition was recognized by Congress when it repassed the Navajo-Hopi

Rehabilitation Bill minus its objectionable jurisdictional provision. And that broader proposition was recognized by the court below this year when it held that Arizona had no criminal jurisdiction over tribal Navajos on the Navajo Reservation. *Application of Denetclaw*, 83 Ariz. 299, 320 P. 2d 697, *supra*, p. 16.

This Court, therefore, should place its decision on the ground of lack of jurisdiction in the Arizona courts over tribal Indians with reference to causes of action arising on Indian reservations. That course is required, not only to effectuate Federal supervision of Indians, not only to protect thousands of tribal Indians from spoliation, but also to maintain unbroken the doctrinal consistency of this Court's decisions, which, since the days of Chief Justice Marshall, have upheld the right of Indians to be free from jurisdiction sought to be asserted over them by any State.

CONCLUSION

The decision below is palpably and inescapably erroneous. It disturbs Indian immunities that for more than a century had been well-settled, and threatens the economic survival of the many thousands of Indians who still live on reservations. The judgment below should therefore be reversed, on the ground that state courts do not have jurisdiction over tribal In-

dians residing on Indian reservations with respect to causes of action arising on such reservations.

Respectfully submitted.

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APPENDIX A

Constitutional, Statutory, and Regulatory Provisions Involved.

1. The Constitution of the United States provides, Art. I, Sec. 8, Cl. 3:

> "The Congress shall have Power . . .
> "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . ."

2. The Constitution of the State of Arizona provides, in pertinent part:

> "Article 20
> "Ordinance
>
> "The following ordinance shall be inviolable without the consent of the United States and the people of this State:
>
> . . . . . .
>
> "Fourth. The people inhabiting this State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that, until the title of such Indian or Indian tribes shall have been extinguished, the same shall be, and remain, subject to the disposition and under the absolute jurisdiction and control of the congress of the United States."

3. Section 1 of the Act of Sept. 13, 1950, c. 947, 64 Stat. 845, 25 U.S.C. § 233 as amended, is as follows:

> **"§ 233. Jurisdiction of New York State Courts in Civil Actions**
>
> "The courts of the State of New York under the laws of such State shall have jurisdiction in civil actions and proceedings between Indians or between

one or more Indians and any other person or persons to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings, as now or hereafter defined by the laws of such State: *Provided,* That the governing body of any recognized tribe of Indians in the State of New York shall have the right to declare, by appropriate enactment prior to September 13, 1952, those tribal laws and customs which they desire to preserve, which, on certification to the Secretary of the Interior by the governing body of such tribe shall be published in the Federal Register and thereafter shall govern in all civil cases involving reservation Indians when the subject matter of such tribal laws and customs is involved or at issue, but nothing herein contained shall be construed to prevent such courts from recognizing and giving effect to any tribal law or custom which may be proven to the satisfaction of such courts: *Provided further,* That nothing in this section shall be construed to require any such tribe or the members thereof to obtain fish and game licenses from the State of New York for the exercise of any hunting and fishing rights provided for such Indians under any agreement, treaty, or custom: *Provided further,* That nothing herein contained shall be construed as subjecting the lands within any Indian reservation in the State of New York to taxation for State or local purposes, nor as subjecting any such lands, or any Federal or State annuity in favor of Indians or Indian tribes, to execution on any judgment rendered in the State courts, except in the enforcement of a judgment in a suit by one tribal member against another in the matter of the use or possession of land: *And provided further,* That nothing herein contained shall be construed as authorizing the alienation from any Indian nation, tribe, or band of Indians of any lands within any Indian reservation in the State of New York: *Provided further,* That nothing herein contained shall be construed as conferring jurisdiction on the courts of the State of New York or making

applicable the laws of the State of New York in civil actions involving Indian lands or claims with respect thereto which relate to transactions or events transpiring prior to September 13, 1952."

4. Section 1 of the Act of March 3, 1901, c. 832, 31 Stat. 1066, as amended (25 U.S.C. § 262), is as follows:

"§ 262. Persons Permitted to Trade With Indians.

Any person desiring to trade with the Indians on any Indian reservation shall, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians."

5. Section 1360 of 28 U.S.C., as added by Sec. 4 of the Act of Aug. 15, 1953, c. 505, 67 Stat. 588, 589, and subsequently amended by Sec. 2 of the Act of Aug. 24, 1954, c. 910, 68 Stat. 795, is as follows:

"§ 1360. State Civil Jurisdiction in Actions to Which Indians Are Parties

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the area of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State,
Oregon	All Indian country within the State except the Warm Springs Reservation
Wisconsin	All Indian country within the State

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section."

6. Sections 6 and 7 of the Act of Aug. 15, 1953, c. 505, 67 Stat. 588, 590, are as follows:

"Sec. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of

civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

"Sec. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof."

7. 25 CFR § 252.13 is as follows:

"252.13. *Trade confined to licensed premises.* All trade with Indians shall be confined to the premises specified in the license, except the buying of livestock and livestock products, which shall be covered by special permits issued by the superintendent."

8. 25 CFR 252.17 is as follows:

"252.17. *Credit at trader's risk.* A trader may extend credit to Indians, but such credit will be at the trader's own risk. All payments to Indians for products or labor must be made in lawful United States money or in credit on the trader's books at the option of the Indian. Receipt must be given Indians for all articles they have sold to traders and on which they have requested book credit. These receipts must show the following information: (a) the date the transaction was made, (b) the amount paid the Indian, and (c) a description of the article or articles sold. All receipts issued by the trader for Indian products must be recorded in the traders' books in such a manner that all information contained in the receipt is duplicated. Receipts may be transferred upon order of the initial recipient if it is to his convenience that such a procedure be followed."

Appendix B

Veto of 1949 Navajo-Hopi Rehabilitation Bill Because of Jurisdictional Feature

1. Section 9 of S. 1407 (95 Cong. Rec. 13659-13660; Sen. Doc. 119, 81st Cong., 1st sess., p. 6) provided in pertinent part as follows:

> "Sec. 9. From and after the effective date of this Act, all Indians within the tribal or allocated lands of the Navajo and Hopi Reservations shall be subject to the laws of the State wherein such lands are located, and shall have access to the courts of such State for the enforcement of their rights and redress of wrongs to the same extent and in the same manner as any other citizen thereof; * * * *And provided further,* That nothing in this Act provided shall be deemed to impair the terms and obligations of any existing statute or treaty between the United States Government and the said Indians, nor take away the jurisdiction now exercised by the Federal Government or the tribes, but in all cases the jurisdiction of the State, the Federal, and the tribal courts shall be concurrent."

2. The text of the President's veto of the foregoing bill (Sen. Doc. 119, 81st Cong., 1st sess., pp. 1-4; 95 Cong. Rec. 14784-14785) was as follows:

> "October 17, 1949
>
> "To the Senate of the United States:
>
> "I return herewith, without my approval, the enrolled bill (S. 1407) to promote the rehabilitation of the Navajo and Hopi Tribes of Indians and the better utilization of the resources of the Navajo and Hopi Indian Reservations, and for other purposes.
>
> "The principal objective of this bill is the establishment of a 10-year program of capital and other improvements for the benefit and rehabilitation of the Navajo and Hopi Tribes of Indians. Appropriations would be authorized for this purpose total-

ing $88,570,000. Among the principal program goals specified and the amounts provided therefor would be: roads and trails, $20,000,000; school buildings and equipment, and other educational measure, $25,000,000; soil and water conservation and range improvement work, $10,000,000; and completion and extension of existing irrigation projects, and completion of the investigation to determine the feasibility of the proposed San Juan-Shiprock irrigation project, $9,000,000.

"I have withheld my approval with reluctance and only after the most careful consideration of all the provisions of S. 1407. The bill contains many meritorious features. In fact, its only objectionable provisions are those of section 9 which, with some qualifications, extend State civil and criminal laws and court jurisdiction to the Navajo-Hopi Reservations which are now under Federal and tribal laws and courts. Section 9 is heavily weighted with possibilities of grave injury to the very people who are intended to be the beneficiaries of the bill. Its many and serious defects outweigh, in my judgment, the merits of the rest of the bill.

"In the first place, the meaning of section 9 is obscure. While it seeks to subject the Navajo and Hopi Indians to the civil and criminal laws of the States where their reservations are situated, in certain circumstances and under certain conditions, the details of these circumstances and conditions cannot be determined, with any assurance of legal correctness, from the language of section 9. For example, the right to inherit personal property, such as cattle, sheep, tools and utensils, is a matter of vital concern to the Navajo and Hopi Indians, as it is to other human beings. The descent of this property upon death is a matter which is now governed by their tribal practices and customs. Section 9 might be construed as abrogating these practices and customs at one fell swoop and imposing upon these Indians a system governing the descent and distribution of personal property which they neither want nor understand.

Another matter of vital concern to the Navajo and Hopi Indians is their water rights, since they live in an arid country where water is the most precious of all natural resources. The jurisdiction to adjudicate, protect, and enforce these water rights is now vested in the Federal courts where Indian rights are assured of full protection. Section 9 might be construed as transferring plenary power over Indian water rights to the State courts where there is much less assurance of protection for Indian rights, or it might be construed as leaving the existing Federal jurisdiction substantially unimpaired. These two illustrations are far from exhaustive, but they reveal quite plainly that the bill contains serious threats to the basic rights of these Indians, and at best would create a series of legal tangles which only years of expensive litigation could unravel. In the interim, many valuable interests might be lost and much irreparable injury suffered by the Navajo and Hopi peoples.

"A second major objection to section 9 is that its avowed purpose of accomplishing a broad-scale extension of State laws to the Navajo and Hopi reservations is in conflict with one of the fundamental principles of Indian law accepted by our Nation, namely, the principle of respect for tribal self-determination in matters of local government. The Congress and the executive branch have repeatedly recognized that so long as Indian communities wished to maintain, and were prepared to maintain, their own political and social institutions, they should not be forced to do otherwise. One of the most liberal self-government clauses ever written for an Indian tribe appears in section 6 of the enrolled bill. That section declares that the Navajo people shall have 'the right to adopt a tribal constitution', which 'may provide for the exercise by the Navajo Tribe of any powers vested in the tribe or any organ thereof by existing law, together with such additional powers as the members of the tribe may, with the approval of the Secretary of the Interior, deem proper to include therein',

and which 'shall authorize the fullest possible participation of the Navajos in the administration of their affairs'. It would be inconsistent to enact into law section 9 concurrently with section 6. If either is to be accepted as meaning what it says, the other must be viewed as mainly rhetoric.

"Statutes have, of course, been enacted from time to time extending State criminal or civil laws to particular Indian communities. Primarily, those statutes dealt with comparatively small groups, the members of which through long association with neighboring whites, had reached the state where they were prepared to and wished to be governed by State and local law. The Navajo and Hopi Tribes are not in this category. They are, indeed, the Indians who are probably least prepared for such a major change.

"Ultimate acceptance of State jurisdiction is a logical consequence of our policy of assisting the Indians to develop their natural talents and physical resources in ways that will enable them to participate fully in our free, but vigorously competitive, society. In the long run, this process of adjustment to our culture can be expected to result in the complete merger of all Indian groups into the general body of our population. Yet the desirability of this result is no reason for compelling the Navajos and Hopis to accept legal integration long before they have been prepared for such a consequence through the orderly course of social and economic integration. Premature steps for tribal dissolution have invariably revealed that the process of cultural adjustment cannot be hastened, and may be retarded, by attempts at legal compulsion. For many years more the lives of the Navajo and Hopi peoples will continue to be governed by the isolation of the country where they live, the facts that four-fifths of them cannot speak English and that the majority of their children have never been to school, the primitive background of their social concepts, the limitations of their economic resources, and other circumstances which tend to make their tribal govern-

ments a necessary instrument for their continued progress in civilization. It would be unjust and unwise to compel them to abide by State laws written to fill other needs than theirs.

"In reaching my decision to veto S. 1407, I have been greatly influenced by the attitude of the Navajo Indians toward the bill. The Navajo Tribe includes about 65,000 of the approximately 70,000 Indians affected by S. 1407. They greatly favor the long-range rehabilitation program which the bill proposes. But much as they favor the constructive provisions of the bill, they fear section 9 more. This is indicated by the fact that a meeting held on October 13, 1949, after final Congressional action on the bill, the Navajo Tribal Council, the Tribe's governing body, adopted a resolution urging that I veto S. 1407.

"In withholding approval from S. 1407, I am glad to note that the principal feature of that measure, the 10-year program of capital improvements provided for in section 1, can be put into effect through normal appropriation procedures. Expenditures for substantially all of the purposes listed in section 1 are authorized by existing laws relating to Indian affairs. The purpose in proposing a special authorization for the 10-year program was to afford the Congress an opportunity to review that program as a whole before appropriation estimates were submitted for the individual items. The Congress, by its action in S. 1407, has now manifested its view that the capital improvements in question should be undertaken at once and prosecuted speedily to completion. Accordingly, I plan to include in the budget for the fiscal year 1951, appropriation estimates that will provide for initiation of the 10-year program. Since statutory authorization for almost all of these items already exists, the failure of S. 1407 to become law will not interpose a legal bar to the appropriation of the necessary funds, although it will result in the loss of some incidental features of S. 1407 that would have been of value to the Indians. I would, of course,

be glad to approve a bill that incorporated these features and the other provisions of S. 1407, without the objectionable provisions of section 9, should the Congress see fit to pass such a measure.

"HARRY S. TRUMAN.

"THE WHITE HOUSE,
"October 17, 1949."

FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

NO. 39

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v.

HUGH LEE, doing business as GANADO TRADING POST.

On Writ of Certiorari to the Supreme Court of the State of Arizona

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

Respondent's brief does not require any reply other than oral argument, but the brief of the United States as *amicus curiae* contains so many questionable propositions and is so fraught with potential injury to the Indian wards of the United States that it must be answered, even at some length.

I. The regulation declaring that a licensed Indian trader extends credit to Indians only at his own risk does not render the Indian's obligation unenforceable in a court of competent jurisdiction.

In our petition for certiorari (Pet. 10-12), we argued that the provision in what is now numbered 25 C. F. R. § 252.17 (Pet. Br. 29), entitled "Credit at trader's risk", to the effect that "A trader may extend credit to Indians, but such credit will be at the trader's own risk", rendered unenforceable any sale made by the trader on unsecured credit—there being regulations governing the taking of pawn or pledges, 25 C. F. R. § 252.16.

In the course of preparing petitioners' brief on the merits, we formulated the argument that this regulation must mean something more than the risk inherent in any sale on credit; for, of course, every retail merchant who permits customers to maintain charge accounts necessarily assumes a measure of commercial risk whenever he makes a sale other than for cash.

At this juncture, we discussed our views informally with members of the staff of the Solicitor for the Interior Department, who called to our attention the earlier form of this regulation (Pet. Br. 20), when it read, "Credit to Indians will be at the trader's own risk, as no assistance will be given by Government officials in the collection of debts against Indians." They advised us, and we in turn pointed out to this Court (Pet. Br. 21), that the second clause of the foregoing sentence was deleted at the request of an association of Indian traders meeting at Gallup, N. M., in November 1933, on the view that the Government's Indian agents should at least use moral suasion to persuade Indians to meet their obligations. The text

of the traders' request is now set forth at U. S. Br. 2-3.

In view of this textual history, we considered untenable our earlier view that the regulation rendered judicially unenforceable the debts thus incurred by the Indians. We felt ourselves unable to contend that the single phrase, "at the trader's own risk", made the obligation such a nullity that it could not be sued upon in a court of competent jurisdiction, or that it was thereby placed on the plane of an illegal or usurious contract. Significantly enough, the traders themselves (U. S. Br. 3) spoke of "the collection of an honest debt."

We did not lightly abandon a contention (Question 2, Pet. 2) in respect of which this Court had granted certiorari. But after the Interior Department's lawyers had made us aware of the textual quicksand on which that contention rested, we simply could not conscientiously or properly press upon this Court an argument that, on its very face, was unsupportable.

The Solicitor General says (U. S. Br. 2), "we construe this provision as meaning that ordinary remedies for collection of debts—including judicial remedies—shall not be invoked within the reservation, and that traders must do business on that basis and understanding." That argument is broad enough to render the obligation unenforceable even if it were sued on in tribal courts (see 25 C. F. R., part 11). The Solicitor General, rather than support the strong substantive position of the Indians which we advocate—a position which he nowhere squarely opposes—seeks to avoid the entire issue by walking out on the quicksand of a

construction so untenable that we abandoned it because we could not in all conscience urge it upon this Court.

Our purpose, of course, is to win this case. But we are simply unable to read into the language of this regulation thus derived the meaning that the Solicitor General professes to find therein.

We are aware, of course, that it is generally sound judicial administration to decide cases narrowly, and that it is specifically the duty of this Court to avoid constitutional adjudication whenever litigation can be disposed of on non-constitutional grounds. But we do not believe that the basic jurisdictional question involved in the present case can be avoided by now inventing a tortured construction of the regulation.

II. Absent Congressional consent, a State court has no jurisdiction of a suit by a non-Indian against an Indian arising out of a transaction taking place on an Indian reservation.

We concluded a lengthy analysis of the authorities (Pet. Br. 8-17) supporting the proposition that state law is ineffective to reach Indians except insofar as Congress has specifically and expressly made them subject to such law by saying (Pet. Br. 17), "a State has jurisdiction over the territory of an Indian reservation within its boundaries—except in matters concerning Indians. Otherwise stated, jurisdiction over matters not concerning Indians is the extent of Arizona's jurisdiction within the Navajo Reservation."

The Government (U. S. Br. 6) cites *Harrison* v. *Laveen*, 67 Ariz. 337, 196 P. 2d 456, which sustained the Indians' right to vote in Arizona, as an instance to the contrary. But just as an Indian's citizenship is irrelevant when considering his amenability to state

law (see cases cited at Pet. Br. 11), so his status as a voter or even as a state official is equally irrelevant. E.g., *Hallowell* v. *United States*, 221 U. S. 317; *United States* v. *Rickert*, 188 U. S. 432, 445; *United States* v. *Nice*, 241 U. S. 591, 598.

Only Congress can render the Indians subject to state legislation and state jurisdiction; we have set forth (Pet. Br. 11-13) a number of recent instances where Congress has done so. Indeed, only at the last session, Congress permitted the Territory of Alaska to exercise civil and criminal jurisdiction over the Indians resident there (Act of August 8, 1958, Pub. L. 85-615, 72 Stat. 545). But, until Arizona complies with the requirements of the Act of August 15, 1953, c. 505, 67 Stat. 588 (Pet. Br. 28-29), its courts are not free to exercise civil jurisdiction over any Indians who reside on Indian Reservations within Arizona. See Pet. Br. 12-13, 14-15. To hold otherwise would permit a state to indulge in sporadic reaches of jurisdiction into the vast Navajo Reservation—about 24,000 square miles, as large as the entire State of West Virginia—without correlative extension of police, road, and other services which are concomitants of civil and criminal jurisdiction.

Earlier, as we have pointed out (Pet. Br. 13), a bill proposing to give the courts of Arizona concurrent jurisdiction over Indians in that state was vetoed by the President, and then repassed by Congress without the objectionable jurisdictional features. This course of dealing was given substantial weight by the court below when it held in 1950 that the Arizona courts had no divorce jurisdiction over two Navajo Indians resident on the Navajo Reservation who, after marriage pursuant to an Arizona license, had obtained a di-

vorce from the Navajo tribal court. *Begay* v. *Miller*, 70 Ariz. 380, 385, 222 P. 2d 624, 627-628; and see discussion in note 3, Pet. Br. 13-14. The decision of the Supreme Court of Arizona now under review, rendered in 1958, is, as we have heretofore indicated (Pet. Br. 13, 14, 18), utterly inconsistent with its 1950 decision in *Begay* v. *Miller*.

The Government, instead of joining wholeheartedly in the Indians' substantive attack on the later decision of the Supreme Court of Arizona, under review here, now seeks to minimize what that court found controlling in *Begay* v. *Miller*. The Solicitor General attempts somehow to avoid the significance of the veto and modification of the foregoing jurisdictional act by relegating his discussion thereof to a footnote (U. S. Br. 7, note 4), in which he speaks of "the reserved jurisdiction which the states already possessed", and of "pre-existing or reserved state power with respect to Indians." What "reserved jurisdiction"? What "pre-existing or reserved state power"?

Such expressions have a nostalgic pre-Appomattox flavor, but that is assuredly their only distinction. For under the Constitution, there is no reserved state power or jurisdiction over Indians, and there never has been, as anyone who troubles to read *Worcester* v. *Georgia*, 6 Pet. 515, will soon learn. Indeed, only this year both the court below as well as the Supreme Court of the neighboring State of New Mexico held that state courts had no criminal jurisdiction over Navajo Indians committing within the Navajo Reservation acts which if done by non-Indians would have violated the criminal laws of the states concerned. *Application of Denetclaw*, 83 Ariz. 299, 320 P. 2d 697; *State* v. *Begay*, 63

N. M. 409, 320 P. 2d 1017, certiorari denied, 357 U. S. 918.

We think that the governing principle was correctly set forth in Cohen, *Handbook of Federal Indian Law* (1941) 116, as follows:

> "That state laws have no force within the territory of an Indian tribe in matters affecting Indians is a general proposition that has not been successfully challenged, at least in the United States Supreme Court, since that Court decided, in *Worcester* v. *Georgia*, that the State of Georgia had no right to imprison a white man residing on an Indian reservation, with the consent of tribal and federal authorities, who refused to conform to state laws governing Indian affairs."

In the 1958 edition of *Federal Indian Law*, prepared by the Office of the Solicitor for the Interior Department, the foregoing passage has been significantly modified (p. 502):

> "From the beginning of our constitutional government, as we have heretofore indicated, Federal power has been interposed so that State laws generally have had little force within the territory of an Indian tribe in matters affecting Indians. This is a general proposition judicially adhered to by the United States Supreme Court since *Worcester* v. *Georgia* * * *."

How account for the change, between 1941 and 1958, from "no force" to "little force"? That change assuredly does not rest on any intervening decisions by this Court; to the contrary, the principles laid down on this point in Mr. Cohen's edition are supported by later rulings here. *Creek County* v. *Seber*, 318 U. S. 705; cf. *Tulee* v. *Washington*, 315 U. S. 681. Moreover,

Mr. Cohen's treatise was repeatedly cited in opinions of this Court in the interim,* and on the last occasion the author was referred to as "an acknowledged expert in Indian law." *Squire* v. *Capoeman*, 351 U. S. 1, 8-9.

It can easily be demonstrated that the change in the text of *Federal Indian Law* rests, not on any intervening change in the law, but on an intervening change in policy. The 1958 edition lets a large cat out of the bag by frankly stating (p. 501):

> "Present Federal policy calls for the termination of Federal supervision of affairs of Indian tribes desiring such termination, to the extent practicable and as soon as termination is feasible. Any discussion of the scope of State power over Indian affairs must take that policy, and measures taken to effectuate it, into consideration. Such discussion must take into consideration also the earlier policy of leaving Indians free from State jurisdiction and control which is deeply rooted in our Nation's history. However, until the policy of terminating Federal supervision is effectuated legislatively by Congress, neither the Indians nor a State legislature can withdraw an organized tribe from that supervision or control. State law does not apply to Indian affairs except so far as, and to the extent that, the United States gives or has given its consent."

We agree entirely with the last sentence of the quotation, which is hardly consistent with the Solicitor

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* E. g., *United States* v. *Santa Fe R. Co.*, 314 U. S. 339, 349; *Creek Nation* v. *United States*, 318 U. S. 629, 639; *Arenas* v. *United States*, 322 U. S. 419, 421; *Drummond* v. *United States*, 324 U. S. 316, 317-318; *United States* v. *Tillamooks*, 329 U. S. 40, 48, 53; *Oklahoma Tax Comm.* v. *Texas Co.*, 336 U. S. 342, 344, 355; *Tee-Hit-Ton Indians* v. *United States*, 348 U. S. 272, 288.

General's newly generated concept of "reserved state power with respect to Indians" (U. S. Br. 7, note 4). We submit that the basic infirmity of the Government's arguments in this case is that they have paid too much attention to the present Federal policy and too little attention to the present Federal law. And inasmuch as the Solicitor General appears here on behalf of the United States, petitioners' guardian, we can only conclude by regretfully repeating the classic query, *Quis custodiet ipsos custodes*—who shall guard the guardians themselves?

CONCLUSION

For the foregoing additional reasons, the judgment below should be reversed on the ground that the Arizona courts had no jurisdiction to entertain the proceeding.

Respectfully submitted.

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IN THE

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October Term, 1958

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v.

HUGH LEE, doing business as GANADO TRADING POST, Respondent,

On Writ of Certiorari to the Supreme Court of the State of Arizona

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BRIEF FOR THE RESPONDENT

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

Those federal and state constitutional provisions, statutes, treaties, and regulations, that are involved in this brief are set forth in Appendix A, infra, pp. 11-14.

ARGUMENT

The courts of the State of Arizona retain jurisdiction of an action by non-Indian against Indian citizens

to enforce contractual obligations made within an Indian reservation where the United States has not affirmatively assumed jurisdiction.

As a basic premise, the authority and jurisdiction here challenged by Petitioners is vested in the state courts. The sovereignty of a state over its own territory and citizens is plenary. Absence of that authority and jurisdiction must result from (1) the delegation of that jurisdiction appearing in the United States Constitution or (2) a valid assumption of that jurisdiction by the federal government under its constitutional powers.

The effectiveness of state law to reach Indians and into Indian Reservations was stated by this Court in U. S. vs. McGowan, et al., 302 U. S. 535:

> "Enactments of the federal government passed to protect and guard its Indian wards only affect the operation, within the colony (reservation), of such state laws as conflict with the federal enactments."

The court below based its opinion on the foregoing proposition, and in support thereof cited the following authorities:

> "We do not question the authority of the federal government over tribal Indians and its right to deprive the state courts of jurisdiction to try and determine litigation of the nature herein involved, but we think the correct statement of the rule is that enunciated by Prof. Ray A. Brown, an eminent authority on Indian law, in his article, The Indian Problem and the Law, 39 Yale Law Journal, pages 314-315. The rule is stated in the following language:

"'While the theory of tribal allegiance and federal guardianship has served in criminal matters to place the Indian in a special category, such has not generally been the result in matters of civil rights. The Indian, whether tribal and a ward of the government or not, may, except where specially restricted by act of Congress, make contracts, acquire and dispose of property, and sue and be sued in the state or federal courts.' (Emphasis ours.)

"To the same effect, 42 C.J.S., Indians, § 86:

"'* * * an Indian may be sued in the state courts in any matter over which the United States has not expressly retained jurisdiction. Where not prohibited by statute, Indians may be sued on contracts or in tort.'

"Many courts have recognized the right of state courts to assume jurisdiction over disputes between Indians and whites. Swartzel v. Rogers, 3 Kan. 374, was a suit between Shawnee Indians to partition land located on the reservation. After declaring there was nothing to show the property was restricted, the court said:

"'The fact that the contestants are Shawnee Indians, did not deprive the district court nor does it forbid to this court the exercise of jurisdiction either as to parties or subject matter. That the property belongs to Indians is not sufficient to place it beyond the jurisdiction of the state courts; and if the subject matter be within their jurisdiction, the parties, whether Indians or white men, have the right to litigate about it therein.'

"That case was cited as authority by the United States Supreme Court in the case of Felix v. Patrick, 145 U. S. 317, 12 S. Ct. 862, 36 L. Ed. 719. Stacy v. LaBelle, 99 Wis. 520, 75 N. W. 60, 41 L. R. A. 419, was a suit in the state court against an Indian for a balance due on account for goods, wares and merchandise sold to the Indian by the plaintiff who was an Indian trader on the reservation operating under and by virtue of a license issued by the United States. It was held the state court had jurisdiction. Red Hawk v. Joines, 129 Ore. 620, 278 P. 572, was an action brought by an Indian who was an allottee without final patent on the Umatilla Indian reservation against a white man to replevy cattle taken from the Indian's possession. State jurisdiction was sustained with a very thorough discussion of the problem of jurisdiction over the Indian, his personal property and over the reservation. Bonnett v. Seekins, 126 Mont. 24, 243 P. 2d 317, was a case where the Indian brought suit against a white to recover rent due under a lease of land held under an allotment. The lease had been approved by the Indian agency. It was held the state court had jurisdiction. To the same effect is Stevenson v. Christie, 64 Ark. 72, 42 S. W. 418, which was a suit by a white man against an Indian on a contract made in Indian territory as the result of the operation by the white man of a mercantile business in the Indian territory.

"There are cases such as is before this court that were tried in the state courts wherein jurisdiction was apparently conceded or at least not presented. Tinker v. Midland Valley Mercantile

Co., 25 Okla. 160, 105 P. 333. This was a suit by an Indian trader against an Indian on a promissory note which defendant contended was void because it was for credit given in excess of that authorized by statute. The case was reviewed by the United States Supreme Court and reversed but not on jurisdictional grounds. Tinker v. Midland Valley Mercantile Company, 231 U. S. 681, 34 S. Ct. 252, 58 L. Ed. 434." (R. 57-59)

The pertinent question, then, is whether by the terms of the U. S. Constitution or by the enactments of the federal government passed to protect Indian wards, the United States has jurisdiction over an action by a non-Indian against a Navajo Indian to enforce a contractual obligation arising on the Navajo Indian Reservation.

THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION DOES NOT DELEGATE SUCH JURISDICTION TO THE UNITED STATES.

Under the commerce clause the federal government may regulate commerce with the Indians. The essence of commerce is the buying, selling and exchanging of commodities. U. S. v. Holliday, 3 Wall 407. The enactment by the federal government of such regulations relating to commerce does not constitute an assumption of jurisdiction by the United States to enforce a contractual obligation. It merely limits the state courts to the extent that state law which may conflict with these regulations must give way. U. S. v. McGowan, 302 U. S. 535.

THE ARIZONA ENABLING ACT (36 U. S. Stat. 557, 568-579) DID NOT DEPRIVE THE STATE OF THIS JURISDICTION.

That act provided, upon compliance with the stated conditions, that Arizona be admitted into the Union on an equal footing with other states; further, that those lands acquired by Indians comprising Indian Reservations should be exempt from taxation by the state so long as Congress prescribes, and that such lands should remain under the jurisdiction of the Congress of the United States. (infra, p. A. 11).

The Enabling Act of the State of Montana, which has provisions identical with the foregoing, was interpreted in Draper vs. U. S., 164 U. S. 240, to mean that the disclaimer referred to Indian lands, not Indian people, and the contention therein advanced that the enabling act "thereby divested the state pro tanto of equal authority and jurisdiction over its citizens, usually enjoyed by other states of the union" was rejected. Thus the disclaimer in Arizona's Enabling Act, in the light of the Draper decision did not constitute an assumption of authority by the United States divesting Arizona of jurisdiction in the instant case.

IN ANSWER TO PETITIONERS

Petitioners' contention that state law is ineffective to reach Indians except insofar as Congress has specifically and expressly made them subject to such law is based upon the fallacious assumption that the source of all jurisdiction, power and authority is vested in the federal government and that the states have only such jurisdiction, power and authority as may be delegated to them by the federal government. This proposition runs headlong into Amendment X

to the United States Constitution (infra. p. A. 13) wherein all powers not specifically delegated to the federal government are reserved to the states.

The federal government in the role of guardian of its Indian wards has not assumed jurisdiction over actions of the instant type, and Arizona has never relinquished that jurisdiction.

Petitioners cite Worcester v. Georgia, 6 Pet. 515, in support of their contention. However, that case is not in point.

The Cherokee Nation was recognized as a political sovereign by Great Britain. The United States succeeded to this position. The Cherokee Nation, as a separate political and governmental entity, entered into various treaties with Great Britain and the United States. The Cherokee Country was separate from Georgia. The United States was pledged to restrain its citizens from trespassing thereon without a passport. The United States recognized the pre-existing power of the Cherokee Nation to govern itself.

Contrast the foregoing with the instant fact situation. The United States succeeded to the position of Mexico regarding the Navajos and the land that now comprises the Navajo Reservation by the treaty of Guadalupe Hidalgo, February 2, 1848 (9 Stat. 922). Political sovereignty of the Navajos was recognized by no one, because, in fact, there was no sovereign.

> "About a century ago when the territory occupied by the Navajos became a part of the United States there was no such thing as a Navajo Tribe in the political sense. There were local leaders or headmen * * * but no hereditary chiefs with coercive powers, and no representative governing

body with either persuasive or coercive powers over the whole tribe. * * *

"Treaties were made between the military and the Tribe through the headmen, and administrative personnel attempted to control the Tribe, implement programs and institute policies through the same medium. In fact there was a time when, if designated headmen failed to achieve desired results, they were replaced by puppet "headmen" armed with badges and documentary proof of authority—needless to say, such "leaders" were powerless." Young, Robert W. (Editor), "The Navajo Yearbook of Planning in Action," Report No. V, Calendar Year 1955, page 112, Navajo Agency, Window Rock, Arizona, 1955.

Indeed, when the Tribal Council was first organized by the federal government in 1923, it was not for the purpose of self-government but for the better administration of the natural resources of the reservation. (See Preamble to the 1923 Regulations, infra, p. A. 14.) The political entity known as the Navajo Tribe was an artificial creature of the federal government, not a recognized nation as was the Cherokee, and Arizona's territorial jurisdiction over the Navajo Reservation is admitted (Br. 15) while in the Worcester case the Cherokee Country was separate from Georgia, and a passport was required to enter therein.

Petitioners cite Ex Parte Crow Dog, 109 U. S. 556, and United States vs. Kagama, 118 U. S. 375, drawing from these cases the conclusion that "unless Congress has specifically consented to the exercise of Arizona's jurisdiction over the Navajo Indians, the Arizona

courts have no jurisdiction of the present action." (Br. 10-11). However, the former case held that there was no federal jurisdiction to punish the murder of one Indian by another on a reservation. Congress then enacted affirmative legislation, designed to protect their Indian wards, making such offenses triable in federal courts. Subsequently the latter case held that the matter could be tried in federal court. Jurisdiction, then, was retained by the state until the federal government affirmatively assumed the same.

The many pages in Petitioners' Brief devoted to the inferred interpretation of the law by an individual president or congress but points up the lack of decisions sustaining Petitioners' position. Such purported interpretation of the law is immaterial.

The opinion of the court below is challenged for stating that if Petitioners' reasoning were sound, that is to say, if state agents could enter upon the reservation only for specific health and educational reasons and not to serve process or make an arrest, "a white man could murder another white man on or off an Indian Reservation and would be secure from Arizona prosecution so long as he could remain within the boundaries of a reservation." Petitioners, however, vigorously argued before the Arizona Supreme Court that officers of the state could not enter upon the reservation, and invited the Arizona court to ponder the above theoretical situation.

CONCLUSION

The State of Arizona retains authority and jurisdiction equal to that enjoyed by other states of the union over all its citizens, whether Indian or non-Indian,

subject to the limitation that this authority and jurisdiction gives way to federal enactments passed to protect Indian wards. Thus, only insofar as the United States has affirmatively assumed jurisdiction, is the state deprived thereof.

We therefore respectfully submit that the judgment below should be affirmed.

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APPENDIX

Constitutional, Statutory, and Regulatory Provisions Involved:

1. The Enabling Act of the State of Arizona, Act June 20, 1910, c. 310, 36 U. S. Stat. 557, 568-579, provides, in pertinent part:

"Section 20

"Second. That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States; that the lands and other property belonging to citizens of the United States residing without the said State shall never be taxed at a higher rate than the lands and other property belonging to residents thereof; that no taxes shall be imposed by the State upon lands or property therein belonging to or which may hereafter be acquired by the United States or reserved for its use; but nothing herein, or in the ordinance herein provided for, shall preclude the said State from taxing as other lands and other property are taxed any lands and other property outside of an Indian reserva-

tion owned or held by any Indian, save and except such lands as have been granted or acquired as aforesaid or as may be granted or confirmed to any Indian or Indians under any Act of Congress, but said ordinance shall provide that all such lands shall be exempt from taxation by said State so long and to such extent as Congress has prescribed or may hereafter prescribe."

* * * * * * * *

"Section 23

"That said constitutional convention shall, by ordinance, provide that in case of the ratification of said constitution by the people, and in case the President of the United States and Congress approve the same, or in case the President approve the same and Congress fails to act in its next regular session, all as hereinbefore provided, an election shall be held at the time named in the proclamation of the governor of Arizona, provided for in the preceding section, at which election of officers for a full state government, including a governor, members of the legislature, one Representative in Congress, and such other officers as such constitutional convention shall prescribe, shall be chosen by the people. Such election shall be held, the returns thereof made, canvassed, and certified to by the Secretary of said Territory, in the same manner as in this Act prescribed for the making of the returns, the canvassing and certification of the same of the election for the ratification or rejection of said constitution, as hereinbefore provided, and the qualifications of the voters at said election for all state officers, members of the legislature, County officers, and Representative

in Congress, and other officers prescribed by said constitution shall be made the same as the qualifications of voters at the election for the ratification or rejection of said constitution, as hereinbefore provided. When said election of state and county officers, members of the legislature, and Representative in Congress, and other officers above provided for shall be held and the returns thereof made, canvassed, and certified, as hereinbefore provided, the governor of the Territory of Arizona shall certify the result of said election as canvassed and certified, as herein provided, to the President of the United States, who thereupon shall immediately issue his proclamation announcing the result of said election so ascertained, and upon the issuance of said proclamation by the President of the United States the proposed State of Arizona shall be deemed admitted by Congress into the Union by virtue of this Act on an equal footing with other States. Until the issuance of said proclamation by the President of the United States, and until the said State is so admitted into the Union and said officers are elected and qualified under the provisions of the Constitution, the County and Territorial officers of said Territory, including the Delegate in Congress thereof elected in the general election in nineteen hundred and eight, shall continue to discharge the duties of their respective offices in and for said Territory: Provided, that no session of the Territorial Legislative Assembly shall be held in nineteen hundred and eleven."

2. The Constitution of the United States provides, Amendment X:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

3. The preamble to regulations promulgated in 1923 by E. D. Merritt, acting Commissioner of Indian Affairs, in accordance with which the Navajo Tribal Council was organized, provided:

"The Navajo Indian Reservation situated in the States of Arizona, New Mexico and Utah, being extensive in area and the number of Indians of said Navajo Tribe having rights therein being numerous and widely distributed in their habitat, and in order to promote better administration of the affairs of the Navajo Tribe of Indians in conformity to law and particularly as to matters in which the Navajo Tribe at large is concerned such as oil, gas, coal and other mineral deposits, tribal timber and development of underground water supply for stock purposes, etc., the following regulations are hereby prescribed and promulgated . . ."

2, fn. 1, 20–21).[3] But it is our view that to read the regulation as amended so as to permit traders to invoke *legal or judicial* remedies to collect unsecured debts renders meaningless the retained phrase, "at the trader's own risk." We believe that the 1937 amendment went no further than to empower the United States Indian Agents to encourage the Indians to pay these debts, and that the coercive force of court proceedings was still excluded. Indeed, the fact that Indian Agents were permitted to educate and encourage their charges to pay just debts would emphasize—if any significant content is still to be given to the provision for credit at the trader's own risk—that formal sanctions would continue to be unavailable.

The court below avoided this question on the procedural ground that the assignment of error in that court had presented only jurisdictional questions, and that the federal regulation went only to the merits of the claim (R. 59). But the federal regulation (which has the effect of a statute) operated to deprive the state courts of jurisdiction over such a claim. This is analogous to the effect of federal enactments under the commerce power of ousting the state legislature or courts of jurisdiction they would otherwise possess, e. g., *Garner* v. *Teamsters Union*, 346 U. S. 485; *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468; *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218.

[3] In their petition for certiorari, petitioners explicitly relied on the regulation. See Pet. 2, 10, 11.

Even if the regulation (standing alone) is thought to be ambiguous, the same conclusion should be drawn from the fact that the field of trading with the Indians has been occupied by the federal statutes and the regulations issued thereunder (as petitioners point out, Pet. Br. 20–21, 27). 25 U. S. C. 261 *et seq.* Departmental decisions have dealt with various aspects of such trading. *State Tax Laws—Indian Trade,* 57 I. D. 124; *State Sales Taxes, Restricted Indian Funds,* 58 I. D. 562; *Regulation of Traders on Navajo Reservation,* 60 I. D. 176. These decisions illustrate the completeness with which such trading is subject to federal control—for example, as to prices to be charged. There is no room for application of state law to such Indian trading. In this area of exclusive and preempted jurisdiction, the remedies of traders are, we submit, limited to those provided by federal statute or regulation. And, in any case, the state court certainly has no authority to enter a judgment contradictory to, or inconsistent with, the federal regulation.

II.

For these reasons, we believe that it is unnecessary to consider what would be the situation absent specific federal statute, regulation, or tribal provision. We do not agree that reservation Indians are beyond the reach of *all* state law until Congress specifically provides otherwise. In *Federal Indian Law,* published by the Department of the Interior in 1958, a writer described as a student of the subject is quoted (p. 363) as declaring "Indians are not extraterritorial but only

subject to a special rule of substantive law." Continuing the quotation, it is said:

> In civil matters the lacunae of federal legislation are so enormous that the general law, though theoretically inapplicable, practically fills the gaps, subject to proof of a positive Indian custom that varies the law. Thus federal legislation and, in default thereof, Indian custom rule; but state law practically covers much of the ground. (W. G. Rice, The Position of the American Indian in the Law of the United States (1934), 16 J. Comp. Leg. 78, 92.)

A few examples of application of state laws to reservation Indians to their benefit are *Harrison* v. *Laveen*, 67 Ariz. 337, 196 P. 2d 456, sustaining their right to vote;[3] *State of Arizona* v. *Hobby*, 221 F. 2d 498 (C. A. D. C.), holding that the state may not exclude reservation Indians from participation in state plans for aid to the disabled; and *Acosta* v. *San Diego County, et al.*, 126 Cal. App. 2d 455, 272 P. 2d 92, holding reservation Indians to be entitled to emergency relief for the indigent. See also *Vermillion* v. *Spotted Elk*, 85 N. W. 2d 432 (N. D. 1957). In the *Harrison* case, the court refers to several instances in

[3] To us, petitioners' apparent agreement with this case and their assertion on the same page of their brief (p. 15) that "the courts of Arizona are not free * * * to exercise civil jurisdiction over any Indians who reside on Indian reservations" are contradictory. On this *general* question of power we see no sharp difference between exercise of civil jurisdiction by the courts or by the state legislature. In fact, it is often necessary to invoke court jurisdiction in order to make effective various legislative provisions (including the right to vote). The *Harrison* case was a mandamus proceeding by reservation Indians against the county recorder.

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No. 39

In the Supreme Court of the United States

OCTOBER TERM, 1958

PAUL WILLIAMS AND LORENA WILLIAMS, HUSBAND AND WIFE, PETITIONERS

v.

HUGH LEE, DOING BUSINESS AS GANADO TRADING POST

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

J. LEE RANKIN,
Solicitor General,
PERRY W. MORTON,
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Attorney,
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the field of domestic relations where the state laws are regularly invoked, and other examples of application of state law are cited in the *Acosta* case. Another instance where use of local facilities and agencies is highly desirable is represented by the various welfare provisions for child care, prevention of juvenile delinquency, and the like. Judicial power may be necessary in order to implement these provisions of state law or regulation.[4]

Since this case can properly be disposed of (in favor of the petitioners) on the ground discussed above in Part I, we believe that it would be inadvisable, as well as unnecessary, for the Court to go further and pass upon the broad question of the general jurisdiction of state courts or legislatures over transactions and matters arising within, or from, an Indian reservation in the state. The problem of state jurisdiction in a particular case may well depend upon

[4] The Federal Government does not attach the same significance to the Presidential veto of the 1949 Navajo-Hopi Rehabilitation Bill as petitioners do (see Pet. Br. 18). The Presidential veto (Pet. Br. 30–35) indicates no more than that certain jurisdiction which the Federal Government had the power to confer on the respective states was withheld; there is no indication that jurisdiction already possessed by the respective states should be withdrawn or that no such pre-existing jurisdiction was thought to exist. Similarly, the Act of August 15, 1953, 67 Stat. 588 (discussed at Pet. Br. 12–15), conferred certain new civil jurisdiction upon the respective states; the Act did not deal with the reserved jurisdiction which the states already possessed. In our view, these and comparable statutes do not show a Congressional purpose to terminate preexisting or reserved state power with respect to Indians until the state affirmatively acts to obtain the new jurisdiction offered by the Federal legislation, or the Federal Government affirmatively acts to provide the states with jurisdiction.

the subject matter of the action, the status of the pertinent federal legislation or regulations, or the purpose and impact of the particular state legislation or regulations. It is inappropriate, in our view, to lay down at this time a definitive or precise rule governing *all* cases and instances. Of course, reservation Indians are wards of the Federal Government and the Federal Government has the duties and obligations of a trustee toward them; any state jurisdiction must therefore be consistent with, and subject to, these duties and obligations of the Federal Government and cannot detract from or interfere with the Federal Government's responsibility and authority. But the effect of this overriding principle on other particular instances need not be decided in this case which can be determined on its own basis.

CONCLUSION

For the foregoing reasons, we submit that the decision below should be reversed on the ground that jurisdiction of the state court over claims by traders on the reservation is precluded by the federal regulations authorizing and controlling such trading.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

PERRY W. MORTON,
Assistant Attorney General.

ROGER P. MARQUIS,
Attorney.

OCTOBER 1958.

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In the Supreme Court of the United States

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No. 39

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v.

HUGH LEE, DOING BUSINESS AS GANADO TRADING POST

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

In the order of this Court of April 14, 1958, granting certiorari, the Solicitor General was invited to file a brief setting forth the views of the United States in this case. 356 U. S. 930. The United States agrees with petitioners that the judgment should be reversed but not on the broad ground urged by petitioners that the courts of Arizona have no jurisdiction over tribal Indians with respect to any cause of action arising within the Navajo Reservation. We believe that it is unnecessary and inadvisable to decide that issue of general application, since the valid federal regulation directed to this particular reservation and particular transaction controls this case.

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v.

HUGH LEE, DOING BUSINESS AS GANADO TRADING POST

On Writ Of Certiorari To The Supreme Court Of The State of Arizona

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE IN RESPONSE TO PETITIONERS' MEMORANDUM FILED AT THE ORAL ARGUMENT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE IN RESPONSE TO PETITIONERS' MEMORANDUM FILED AT THE ORAL ARGUMENT

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1958

No. 39

PAUL WILLIAMS AND LORENA WILLIAMS, HUSBAND AND WIFE, PETITIONERS

v.

HUGH LEE, DOING BUSINESS AS CANADO TRADING POST

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE IN RESPONSE TO PETITIONERS' MEMORANDUM FILED AT THE ORAL ARGUMENT

This memorandum is filed in response to the invitation of the Court at the conclusion of the oral argument. The memorandum filed by petitioners at the argument lists cases presently pending in the Navajo tribal courts [1] by traders to collect bills owed to them by Indians upon the reservation. Petitioners' counsel, as we understand his argument, considers the fact that tribal courts have entertained such proceedings as dispositive of the so-called "narrow" ground urged in our brief amicus curiae. On the contrary we think this fact supports our position.

his argument, considers the fact that tribal courts have entertained such proceedings as dispositive of the so-called "narrow" ground urged in our brief amicus curiae. On the contrary we think this fact supports our position.

Our view was premised on both the regulation specifically dealing with the subject of credit by traders and the fact that the general subject of trading with the Indians had been occupied by federal statute and regulations. It was the state legal and judicial remedies which were thereby excluded to which reference was made in our brief

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1/ For present purposes we will follow petitioners' designation of these courts. We understand that the reference is to the Court of Indian Offenses established under 25 C.F.R. 11.

2/ Various aspects of the authority of the tribal courts are discussed in Federal Indian Law (Dept. of Interior 1958), pp. 444-451.

(p. 4). Remedies furnished under federal authority are within the purpose of the amendment of the regulation to educate the Indians to the idea of prompt payment of debts (Govt. Br. p. 3) and their existence does not do violence to the regulation. Petitioners' memorandum reemphasizes the fact that the federal statutes and regulations have fully occupied the field and show that the traders have their remedies thereunder.[2] Consequently, we repeat that "we believe it is unnecessary to consider what would be the situation absent specific federal statute, regulation or tribal provision" (Govt. Br. p. 5). The Department of the Interior agrees.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

PERRY W. MORTON,
Assistant Attorney General.

ROGER P. MARQUIS,
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NOVEMBER 1958.

I.

The Interior Department's regulation[1] is explicit that a trader with the Indians may extend credit to them, "but such credit will be at the trader's own risk." The Interior Department and we construe this provision as meaning that ordinary remedies for collection of debts—including judicial remedies—shall not be invoked within the reservation, and that traders must do business on that basis and understanding. The prior regulation, as it existed before 1937, proscribed assistance by Government officials in providing that "no assistance will be given by Government officials in the collection of debts against Indians" (see Pet. Br. 20).

It appears from the records of the Bureau of Indian Affairs that the changed language was initially recommended by the United Indian Traders' Association, which gave the following as its reasons for suggesting the alteration:

Explanatory note: In the first part of the

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[1] 25 C. F. R. 252.17 provides:

"*Credit at trader's risk.* A trader may extend credit to Indians, but such credit will be at the trader's own risk. All payments to Indians for products or labor must be made in lawful United States money or in credit on the trader's books at the option of the Indian. Receipt must be given Indians for all articles they have sold to traders and on which they have requested book credit. These receipts must show the following information: (a) the date the transaction was made, (b) the amount paid the Indian, and (c) a description of the article or articles sold. All receipts issued by the trader for Indian products must be recorded in the trader's books in such manner that all information contained in the receipt is duplicated. Receipts may be transferred upon order of the initial recipient if it is to his convenience that such a procedure be followed."

foregoing paragraph the Association has recommended the omission of the provision that Government officials would lend no assistance in the collection of debts. Is is not suggested that the agencies go in for collection work but it is thought that the agencies might well use such means as they have at their disposal to educate the Indians to the idea that prompt payment of debts is desired and encouraged by the Government and that when the individual deems it possible some assistance may be given in the collection of an honest debt. The bulk of the business of the licensed traders is barter pure and simple. The wholesale houses at the present time are cutting down on credit to the Trader yet the Trader is compelled to carry the Indian accounts for a considerable period of time. The Indian cannot pay cash in many instances and even, if he keeps his account on a cash basis by trading rungs [sic], wool or lambs, the trader cannot realize his cash from these Indian products without considerable delay, consequently, anything which will assist in speeding up the liquidation of the Indians' accounts will tend to lower the prices of the goods sold to the Indians. In this behalf it is pointed out that the prevailing rates of interest paid by the traders in this area are eight to ten percent per annum.

This quotation is from a "Memorandum of Action Taken by the United Indian Traders' Association at a meeting at the Harvey House, Gallup, November 12, 1933."

Because of this history, petitioners apparently abandon their reliance upon the regulation (Pet. Br.